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FEDERAL REGISTER

Vol. 77 Thursday,

No. 173 September 6, 2012

Pages 54787–55104

OFFICE OF THE FEDERAL REGISTER

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0917; Directorate Identifier 2012–CE–030–AD; Amendment 39–17177; AD 2012–18–01]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all M7 Aerospace LLC Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), SA227–AT, and SA227–TT airplanes. This AD requires repetitively inspecting the left and right forward (main) and aft spar wing-to-fuselage attach fittings for cracks and replacing any cracked fitting. This AD also requires reporting certain inspection results to the FAA. This AD was prompted by reports of fatigue cracking in the left and right forward (main) spar wing-to-fuselage attach fittings. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective September 21, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 21, 2012.

We must receive comments on this AD by October 22, 2012.

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

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

For service information identified in this AD, contact M7 Aerospace LP, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.m7aerospace.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–150 (c/o San Antonio MIDO (SW–MIDO–43)), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports of premature fatigue cracks found in the left and right forward (main) spar wing-to-fuselage attach fittings on M7 Aerospace LLC SA226 and SA227 airplanes. Each airplane is equipped with two attach fittings on the forward (main) spar and two on the aft spar on the left and right side of the airplane. An owner/operator of five of the affected airplanes had the left and right forward (main) spar wing-to-fuselage attach fittings inspected, and all five airplanes had cracks in at least one of the attach fittings. On the 5 airplanes, a total of 20 left and right forward (main) spar wing-to-fuselage attach fittings were inspected; 7 of those were found with cracks. The cracks found emanate from the end pad fastener holes to the free edge of the pad and in the fillet radii of the upper outboard corner on both fitting halves.

M7 Aerospace LLC has included inspection of the aft spar attach fittings in the service information since they are similar to the forward fittings in design and experience equivalent load cycles.

This condition, if not corrected, could result in failure of the wing-to-fuselage attach fitting, which could cause the wing to separate from the airplane.

Relevant Service Information

We reviewed M7 Aerospace LLC SA226 Series Service Bulletin 226–53–016, dated July 27, 2012, with Supplement A—SB 226–53–016, dated June 22, 2012; SA227 Series Service Bulletin 227–53–010, dated July 27, 2012, with Supplement A—SB 227–53–010, dated June 22, 2012; and SA227 Series Service Bulletin CC7–53–006, dated July 27, 2012, with Supplement A—SB CC7–53–006 dated June 22, 2012. The service information describes procedures for repetitively inspecting the left and right forward (main) and aft spar wing-to-fuselage attach fittings for cracks and replacing any cracked fitting.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously. This AD also requires sending certain inspection results to the FAA.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice

and comment prior to adoption of this rule because cracks in the wing-to-fuselage attach fittings could cause the fitting to fail, which could result in wing separation from the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0917 and Directorate Identifier 2012–CE–030–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 330 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
Inspect the left and right forward (main) and aft spar wing-to-fuselage attach fittings for cracks.	52 work-hours × $85 per hour = $4,420 per inspection cycle.	Not applicable	$4,420 per inspection cycle.	$1,458,600 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace cracked wing-to-fuselage attach fitting pair.	100 work-hours × $85 per hour = $8,500	$3,600	$12,100

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):

2012–18–01 M7 Aerospace LLC (Type Certificate Previously Held by Fairchild Aircraft Incorporated): Amendment 39–17177; Docket No. FAA–2012–0917; Directorate Identifier 2012–CE–030–AD.

(a) Effective Date

This AD is effective September 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC (type certificate previously held by Fairchild Aircraft Incorporated) Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), SA227–AT, and SA227–TT airplanes, all serial numbers, that are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5741, Wing, Fuselage Attach Fitting.

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracking in the left and right forward (main) and aft spar wing-to-fuselage attach fittings. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Inspection

At the initial and repetitive compliance times specified in Appendix 1 to this AD, inspect the left and right forward (main) and aft spar wing-to-fuselage attach fittings for cracks. Do the inspections following M7 Aerospace LLC SA226 Series Service Bulletin 226–53–016, dated July 27, 2012, with Supplement A—SB 226–53–016, dated June 22, 2012; M7 Aerospace LLC SA227 Series Service Bulletin 227–53–010, dated July 27, 2012, with Supplement A—SB 227–53–010, dated June 22, 2012; and M7 Aerospace LLC SA227 Series Service Bulletin CC7–53–006, dated July 27, 2012, with Supplement A—SB CC7–53–006, dated June 22, 2012, as applicable.

(h) Replacement

If cracks are found during any inspection required in paragraph (g) of this AD, before further flight, replace both wing-to-fuselage attach fitting halves (pair) at the cracked fitting location. Do the replacement following M7 Aerospace LLC SA226 Series Service Bulletin 226–53–016, dated July 27, 2012; M7 Aerospace LLC SA227 Series Service Bulletin 227–53–010, dated July 27, 2012; and M7 Aerospace LLC SA227 Series Service Bulletin CC7–53–006, dated July 27, 2012, as applicable.

(i) Reporting Requirement

If cracks are found during any inspection required in paragraph (g) of this AD, within 10 days after the inspection in which cracks are found or within 10 days after the effective date of this AD, whichever occurs later, report the results of the inspections to the FAA, ASW–150 (c/o San Antonio MIDO (SW–MIDO–43)), Attn: Andrew McAnaul, Aerospace Engineer, 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.* Please identify AD 2012–18–01 in the subject line if submitted through email. Include the following information in the report:

(1) Length of crack(s) and a general description of the damage.

(2) Airplane model, serial number, aircraft total flight cycles, and total hours time-in-service (TIS).

(3) Using figure 2 in M7 Aerospace LLC SA226 Series Service Bulletin 226–53–016, dated July 27, 2012; M7 Aerospace LLC SA227 Series Service Bulletin 227–53–010, dated July 27, 2012; and M7 Aerospace LLC SA227 Series Service Bulletin CC7–53–006, dated July 27, 2012, as applicable, indicate location of damage, show forward orientation using arrows, and orientation of crack.

(4) Whether the airplane has had, or is suspected of having, a hard landing in the past.

(j) Paperwork Reduction Act Burden Statement

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

(k) Alternative Methods of Compliance (AMOCs)

(1) The Fort Worth Airplane Certification Office, 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.

(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.

(l) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–150 (c/o San Antonio MIDO (SW–MIDO–43)), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) M7 Aerospace LLC SA226 Series Service Bulletin 226–53–016, dated July 27, 2012, with Supplement A—SB 226–53–016, dated June 22, 2012.

(ii) M7 Aerospace LLC SA227 Series Service Bulletin 227–53–010, dated July 27, 2012, with Supplement A—SB 227–53–010, dated June 22, 2012.

(iii) M7 Aerospace LLC SA227 Series Service Bulletin CC7–53–006, dated July 27, 2012, with Supplement A—SB CC7–53–006, dated June 22, 2012.

(3) For M7 Aerospace LLC service information identified in this AD, contact M7 Aerospace LP, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.m7aerospace.com.*

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

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

Appendix 1 to AD 2012–18–01

Initial and Repetitive Inspection Compliance Times

Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, All Serial Numbers

Initial Inspection—As of September 21, 2012 (the effective date of this AD):

For owner/operators who do not track total aircraft flight cycles (TAC), for the purposes of this AD, use the following conversion calculation: Use a .5 to 1 conversion, e.g., 35,000 TAC is equivalent to 17,500 hours time-in-service (TIS).

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the initial inspection compliance time: Use a 1 to 1 conversion, e.g., 300 flight cycles are equivalent to 300 hours TIS.

For airplanes with more than 35,000 TAC: Inspect within the next 300 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with at least 20,000 TAC but no more than 35,000 TAC: Inspect within the next 500 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with at least 10,600 TAC but no more than 19,999 TAC: Inspect within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with less than 10,600 TAC: Inspect upon reaching 10,600 TAC or within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD), whichever occurs later.

Repetitive Inspection:

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the repetitive inspection compliance times: Use a .5 to 1 conversion, e.g., 10,600 flight cycles are equivalent to 5,300 hours TIS.

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using the same size bolts, repetitively thereafter inspect every 10,600 flight cycles.

Initial and Repetitive Inspection Compliance Times

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using oversized bolts, repetitively thereafter inspect every 7,700 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach fitting is installed using the same size bolts, repetitive thereafter inspect every 16,600 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach fitting is installed using the oversized bolts, repetitive thereafter inspect every 13,100 flight cycles.

Models SA227–CC and SA227–DC (C–26B), All Serial Numbers

Initial Inspection—As of September 21, 2012 (the effective date of this AD):

For owner/operators who do not track total aircraft flight cycles (TAC), for the purposes of this AD, use the following conversion calculation: Use a .5 to 1 conversion, e.g., 35,000 TAC is equivalent to 17,500 hours time-in-service (TIS).

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the initial inspection compliance time: Use a 1 to 1 conversion, e.g., 300 flight cycles are equivalent to 300 hours TIS.

For airplanes with more than 35,000 TAC: Inspect within the next 300 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with at least 20,000 TAC but no more than 35,000 TAC: Inspect within the next 500 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with at least 14,200 TAC but no more than 19,999 TAC: Inspect within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with less than 14,200 TAC: Inspect upon reaching 14,200 TAC or within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD), whichever occurs later.

Initial and Repetitive Inspection Compliance Times

Repetitive Inspection

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the repetitive inspection compliance times: Use a .5 to 1 conversion, e.g., 14,200 flight cycles are equivalent to 7,100 hours TIS.

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using the same size bolts, repetitively thereafter inspect every 14,200 flight cycles.

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using oversized bolts, repetitively thereafter inspect every 10,900 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach fitting is installed using the same size bolts, repetitive thereafter inspect every 16,600 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach fitting is installed using the oversized bolts, repetitive thereafter inspect every 13,100 flight cycles.

Models SA227–AC (C–26A) and SA227–AT: Serial Numbers 600 and Subsequent; and Model SA227–BC (C–26A) Airplanes, All Serial Numbers

Initial Inspection—As of September 21, 2012 (the effective date of this AD):

For owner/operators who do not track total aircraft flight cycles (TAC), for the purposes of this AD, use the following conversion calculation: Use a .5 to 1 conversion, e.g., 35,000 TAC is equivalent to 17,500 hours time-in-service (TIS).

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the initial inspection compliance time: Use a 1 to 1 conversion, e.g., 300 flight cycles are equivalent to 300 hours TIS.

For airplanes with more than 35,000 TAC: Inspect within the next 300 flight cycles after September 21, 2012 (the effective date of this AD).

Inspection Compliance Times

For airplanes with at least 20,000 TAC but no more than 35,000 TAC: Inspect within the next 500 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with at least 14,200 TAC but no more than 19,999 TAC: Inspect within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with less than 14,200 TAC: Inspect upon reaching 14,200 TAC or within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD), whichever occurs later.

Repetitive Inspection

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the repetitive inspection compliance times: Use a .5 to 1 conversion, e.g., 14,200 flight cycles are equivalent to 7,100 hours TIS.

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using the same size bolts, repetitively thereafter inspect every 14,200 flight cycles.

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using oversized bolts, repetitively thereafter inspect every 10,900 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach fitting is installed using the same size bolts, repetitive thereafter inspect every 16,600 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach fitting is installed using the oversized bolts, repetitive thereafter inspect every 13,100 flight cycles.

Inspection Compliance Times

Models SA227–AC (C–26A) and SA227–AT: All Serial Numbers Through 599; and Model SA227–TT Airplanes, All Serial Numbers

Initial Inspection—As of September 21, 2012 (the effective date of this AD):

For owner/operators who do not track total aircraft flight cycles (TAC), for the purposes of this AD, use the following conversion calculation: Use a .5 to 1 conversion, e.g., 35,000 TAC is equivalent to 17,500 hours time-in-service (TIS).

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the initial inspection compliance time: Use a 1 to 1 conversion, e.g., 300 flight cycles are equivalent to 300 hours TIS.

For airplanes with more than 35,000 TAC: Inspect within the next 300 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with at least 20,000 TAC but no more than 35,000 TAC: Inspect within the next 500 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with at least 10,600 TAC but no more than 19,999 TAC: Inspect within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD).

For airplanes with less than 10,600 TAC: Inspect upon reaching 10,600 TAC or within the next 1,000 flight cycles after September 21, 2012 (the effective date of this AD), whichever occurs later.

Repetitive Inspection:

For owner/operators who do not track flight cycles, for the purposes of this AD use the following conversion calculation for the repetitive inspection compliance times: Use a .5 to 1 conversion, e.g., 10,600 flight cycles are equivalent to 5,300 hours TIS.

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using the same size bolts, repetitively thereafter inspect every 10,600 flight cycles.

Inspection Compliance Times

If no cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the original wing-to-fuselage attach fitting is reinstalled using oversized bolts, repetitively thereafter inspect every 7,700 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach

fitting is installed using the same size bolts, repetitive thereafter inspect every 16,600 flight cycles.

If cracks are found during the initial inspection or during any subsequent repetitive inspection required by this AD and the replacement wing-to-fuselage attach fitting is installed using the oversized bolts, repetitive thereafter inspect every 13,100 flight cycles.

Issued in Kansas City, Missouri, on August 24, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21536 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0228; Directorate Identifier 2012–NE–09–AD; Amendment 39–17179; AD 2012–18–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Pratt & Whitney Division PW4000–94″ and PW4000–100″ turbofan engines having a 1st stage high-pressure turbine (HPT) seal support, part number (P/N) 55K601 (contained within assembly P/N 55K602–01) or P/N 50K532 (contained within assembly P/N 50K530–01), installed. This AD was prompted by 58 reports of cracked 1st stage HPT air seal rings, including 15 in-flight engine shutdowns. This AD requires removal and replacement of the 1st stage HPT seal support and inspection of the 1st stage HPT air seal ring. We are issuing this AD to prevent failure of the 1st stage HPT air seal ring, which could lead to an internal oil fire, uncontained engine failure, and damage to the airplane.

DATES: This AD is effective October 11, 2012.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. You may view this 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: James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on April 20, 2012 (77 FR 23637). That NPRM proposed to require removal and replacement of the 1st stage HPT seal support and inspection of the 1st stage HPT air seal ring.

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.

Support for the NPRM

Commenter The Boeing Company supports the contents of the proposed AD (77 FR 23637, April 20, 2012) as written.

Request To Add Credit for Prior Compliance

FedEx Express (FedEx) requested that the AD include credit for previous compliance.

We agree. We added ''Comply with this AD the next time the HPT module is removed from the engine, unless already done'' to paragraph (e) of the AD.

Request To Change Compliance to Next Piece-Part Exposure

FedEx requested that we clarify that the required removal and inspections occur when the part is completely disassembled and at the piece-part level.

We do not agree. Removal of the 1st stage HPT seal support and inspection of the 1st stage HPT air seal ring are required when the HPT module is removed from the engine, which is not necessarily when the parts are at the piece-part level. Performing the actions the next time the HPT module is removed is required to maintain an acceptable level of safety for the fleet. We did not change the AD.

Request To Add the P/N of the Affected 1st Stage HPT Air Seal Ring

Lufthansa Technik AG requested that we add the P/N of the 1st stage HPT air seal ring that requires inspection to paragraph (e)(2) of the proposed AD (77 FR 23637, April 20, 2012). The commenter states that there are two air seals in this area of the engine and clarification would help avoid confusion over which one requires inspection.

We agree. We revised paragraph (e)(2) of the AD to include 1st stage HPT air seal ring, P/N 50L664.

Request To Change Compliance Time

Martinair requested that paragraph (e) of the proposed AD (77 FR 23637, April 20, 2012) be changed from ''* * * the next time that the engine is separated at the M-flange and the HPT module is removed from the engine'' to ''* * * the next time the HPT module is removed from the engine.'' The commenter states that the wording is confusing and may be interpreted that one is allowed to separate the engine at the M-flange, without intending to remove the HPT module from the engine, and therefore the support would not require replacement.

We agree. Including reference to the M-flange is redundant and not required, since the M-flange must be separated for the HPT module to be removed from the engine. We changed paragraph (e) of the AD to ''comply with this AD the next time that the HPT module is removed from the engine.''

Request To Reference the Latest Service Information

Pratt & Whitney (P&W) requested that the AD reference the latest versions of service bulletins (SBs) PW4ENG 72–721 and PW4G–100–72–166 because they were revised since the proposed AD (77 FR 23637, April 20, 2012) was published.

We disagree. The service information is only included as related information and is not incorporated by reference. Therefore, it is not necessary to specify a revision level and date of the service information in the AD. The proposed AD did include the revision level and date, but we modified the AD to remove those details.

Request To Revise the P/Ns of the 1st Stage HPT Seal Support

Martinair, United, and P&W requested that the P/Ns of the 1st stage HPT seal support be changed because the 1st stage HPT seal support P/N is not generally tracked by itself, although the assembly P/N is. One commenter recommended mandating full incorporation of P&W SBs PW4ENG 72–721 and PW4G–100–72–166, while another commenter recommended including the assembly P/Ns.

We partially agree. We agree that the assembly P/Ns should be included for clarity because the 1st stage HPT seal support is not generally tracked by itself. The assembly includes the support and the mating brush seal. Even though they are sold as sets and generally tracked together, it is important to note that the unsafe condition has been identified on the HPT seal support and not the brush seal. We disagree that the SBs should be incorporated by reference because there are multiple acceptable methods of performing the actions required by the AD. We changed paragraph (e)(1) of the AD to ''Remove the 1st stage HPT seal support, P/N 55K601 (contained within assembly P/N 55K602–01) or P/N 50K532 (contained within assembly P/N 50K530–01), from service and replace it with a serviceable 1st stage HPT seal support.''

Request To Revise the Cost of Compliance

United requested that we revise the costs of compliance because the latest parts cost is $48,695, not $45,723, as stated in the proposed AD (77 FR 23637, April 20, 2012).

We agree. We included the latest parts costs in the Costs of Compliance paragraph of the 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. We also determined that, other than the updated parts cost, these changes will not increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 446 P&W PW4000–94″ and PW4000–100″ turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 3 work-hours to perform the removal and replacement of the 1st stage HPT seal support, and the removal, inspection, and replacement if necessary of the 1st stage HPT air seal ring. The average labor rate is $85 per work-hour. Required parts will cost about $48,695 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $21,831,700.

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, 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):

2012–18–03 Pratt & Whitney Division: Amendment 39–17179; Docket No. FAA–2012–0228; Directorate Identifier 2012–NE–09–AD.

(a) Effective Date

This AD is effective October 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Pratt & Whitney Division turbofan engines:

(1) PW4000–94″ engine models PW4050, PW4052, PW4056, PW4152, PW4156, PW4650, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4156A, PW4158, PW4160, PW4460, and PW4462, including models with any dash-number suffix, with a 1st stage high-pressure turbine (HPT) seal support, part number (P/N) 55K601 (contained within assembly P/N 55K602–01) or P/N 50K532 (contained within assembly P/N 50K530–01), installed.

(2) PW4000–100″ engine models PW4164, PW4164C, PW4164C/B, PW4168, and PW4168A with a 1st stage HPT seal support, P/N 55K601 (contained within assembly P/N 55K602–01) or P/N 50K532 (contained within assembly P/N 50K530–01), installed.

(d) Unsafe Condition

This AD was prompted by 58 reports of cracked 1st stage HPT air seal rings, including 15 in-flight engine shutdowns. We are issuing this AD to prevent failure of the 1st stage HPT air seal ring, which could lead to an internal oil fire, uncontained engine failure, and damage to the airplane.

(e) Compliance

Comply with this AD the next time the HPT module is removed from the engine, unless already done.

(1) Remove the 1st stage HPT seal support, P/N 55K601 (contained within assembly P/N 55K602–01) or P/N 50K532 (contained within assembly P/N 50K530–01), from service and replace it with a serviceable 1st stage HPT seal support.

(2) Remove the 1st stage HPT air seal ring, P/N 50L664, from the engine and fluorescent-penetrant-inspect, or eddy current-inspect, it for cracks. If found cracked, remove the 1st stage HPT air seal ring from service.

(f) Definition

For the purpose of this AD, a serviceable 1st stage HPT seal support is one that has a P/N that is not listed in this AD.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For more information about this AD, contact James Gray, Aerospace Engineer, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

(2) Pratt & Whitney Service Bulletin (SB) No. PWENG 72–721 and SB No. PW4G–100–72–166, pertain to the subject of this AD.

(3) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503.

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on August 16, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–21821 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1229; Directorate Identifier 2011–NM–132–AD; Amendment 39–17181; AD 2012–18–05]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes; equipped with center wing fuel tank and Boeing original equipment manufacturer-installed auxiliary fuel tanks. This AD was prompted by fuel system reviews conducted by the manufacturer. This AD requires adding design features to detect electrical faults and to detect a pump running in an empty fuel tank. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective October 11, 2012.

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: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@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 November 14, 2011 (76 FR 70377). That NPRM proposed to require adding design features to detect electrical faults, to detect a pump running in an empty fuel tank, and to ensure that a fuel pump's operation is not affected by certain conditions.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 70377, November 14, 2011) and the FAA's response to each comment.

Request To Revise Applicability

Boeing requested that we revise the applicability of the NPRM (76 FR 70377, November 14, 2011) to exclude airplanes from which auxiliary fuel tanks have been removed, and to add certain airplanes equipped with a center wing fuel tank. Boeing stated that the system safety assessments (SSAs) of Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78 (66 FR 23086, May 7, 2001) concluded that design changes were required on all auxiliary fuel tanks on Model DC–9, MD–80, and MD–90 airplanes, and on the center wing fuel tank on Model MD–80 and MD–90 airplanes. American Airlines (American) concurred with Boeing's position on this issue.

We agree to limit the applicability of this AD to affected airplanes equipped with center wing fuel tanks and Boeing OEM-installed auxiliary fuel tanks. We also agree that airplanes on which auxiliary fuel tanks have been removed are not subject to the requirements of this AD. We have revised paragraph (c) in this final rule accordingly.

Requests To Remove Criteria for Mean Time Between Failures (MTBF)

Boeing and TDG Aerospace requested that we provide justification for the removal of pump nuisance trip relative to the 100,000-hour MTBF reliability requirements to mitigate the ignition prevention unsafe condition. The commenters asserted that the 100,000-hour MTBF reliability requirement is not a contributing factor to the ignition source unsafe condition for design changes mandated by the NPRM (76 FR 70377, November 14, 2011). American concurred with Boeing's position on this issue.

We agree with the request. The MTBF of the component will be addressed in the design change package provided for certification to satisfy the criteria for compliance with the requirements of this AD. We have accordingly removed paragraph (g)(3) in this final rule.

Request To Redefine Certain Failure Conditions

Boeing claimed that the NPRM (76 FR 70377, November 14, 2011) was too broad in its descriptions of the unsafe failure modes. Boeing requested that we revise paragraph (g) of the NPRM to define the failure modes that would require corrective action as electrical faults that are ''capable of burning through the pump housing's explosion-proof boundaries'' (instead of those that ''can cause arcing and burn through the fuel pump housing,'' as specified in the NPRM). Boeing asserted that this clarification would ensure that the corrective actions would target only the potential fuel tank ignition sources identified during the SSAs, by identifying only those fuel pump electrical faults and fuel pump dry-running conditions capable of developing a fuel tank ignition source. American concurred with Boeing's position on this issue.

We disagree with the request. Narrowing the failure conditions to certain types of failures or certain explosion-proof pump boundaries would limit the application of a broader

array of ignition prevention solutions. We have not changed the final rule regarding this issue.

Request To Remove Certain Restriction

Paragraph (g)(2) of the NPRM (76 FR 70377, November 14, 2011) specified that the new pump shutoff system must shut off each pump no later than 60 seconds after the fuel tank is emptied. Noting that the SFAR 88 SSAs recommended minimizing dry-running time but provided no specific dry-running time limit, Boeing requested that we remove the 60-second restriction. Boeing suggested basing dry-running time limits on the risk of developing a fuel tank ignition source threat by the affected designs, and added that the pump shutoff design feature must balance that risk against adding to crew workload to correct nuisance pump shutoffs in a near-empty fuel tank. Boeing noted that the FAA has approved auto-shutoff timers on other airplane designs that may allow pumps to run longer than 60 seconds after a fuel tank was emptied. American concurred with Boeing's position on this issue.

We do not agree to remove the 60-second pump shutoff restriction. The intent of this AD is to mandate that fuel pumps be shut off after fuel tanks empty to prevent pump dry running. The FAA has mandated a 15-second shutoff time on other applications, and has determined that a 60-second shutoff time is not unreasonable in this case. We have not changed the final rule regarding this issue.

Request To Mandate Airworthiness Limitations

Boeing noted that the NPRM (76 FR 70377, November 14, 2011) would not mandate airworthiness limitations such as critical design configuration control limitations (CDCCLs) and/or repetitive inspections or functional checks for the proposed changes. Boeing requested that we revise Note 1 of the NPRM to require operators to comply with any related airworthiness limitations. American concurred with Boeing's position on this issue.

We disagree with the request to mandate airworthiness limitations. CDCCLs for this design are not defined yet and will be included in the certification approval, as required under paragraph (g) of this AD. We have removed Note 1 in this final rule, but have otherwise not changed the AD regarding this issue.

Request To Delay Issuance of Final Rule

American requested that we delay issuing the final rule pending the release of service information associated with the design features proposed by the NPRM (76 FR 70377, November 14, 2011). American indicated that additional time is necessary to allow operators time for reviewing the modification options, planning, ordering modification parts, and completing the required work during a heavy maintenance check.

We disagree with the request. Delaying issuance of this AD would have adverse safety implications. We anticipate that FAA-approved design solutions will be available in sufficient time for operators to comply with the AD within 60 months. We have not changed the final rule regarding this issue.

Request To Clarify Terminology

TDG Aerospace requested that we clarify the term ''preclude'' as used in the NPRM (76 FR 70377, November 14, 2011) in paragraph (g)(2): ''The pump shutoff system design must preclude undetected running of a fuel pump in an empty tank, after the pump was commanded off manually or automatically.'' TDG Aerospace considered ''undetected running of a fuel pump'' a significant latent failure condition, as defined by FAA Advisory Circular 25.981–1C, ''Fuel Tank Ignition Source Prevention Guidelines,'' dated September 19, 2008 (*http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%2025_981-1.pdf*). TDG therefore requested that we confirm that use of the word ''preclude'' is done in the context of the allowable period of latency for significant latent failure conditions (i.e., one flight cycle). The commenter did not justify or further explain the request.

We agree that the word ''preclude'' is consistent with failure latency period equal to one flight accommodated in paragraph 10.c.(3) of FAA AC 25.981–1C. We have not changed the final rule regarding this issue.

Request To Approve Modification

American requested that we approve for compliance with the NPRM (76 FR 70377, November 14, 2011) the installation of a certain universal fault interrupter that American alleges will adequately address the unsafe condition. American stated that the functionality of this modification has been demonstrated and approved as equivalent or exceeding the protection provided by that of a standard ground fault interrupter (GFI) relay previously approved for AD 2011–18–03, Amendment 39–16785 (76 FR 53317, August 26, 2011); and AD 2011–20–07, Amendment 39–16818 (76 FR 60710, September 30, 2011).

We disagree with the request. Those parts have not been approved for these airplanes. The referenced ADs apply to airplanes not affected by this AD, and do not address the same unsafe condition identified in this AD. We have not changed the final rule regarding this issue.

Request To Add Flight Crew Notification

The Air Line Pilots Association, International (ALPA) fully supported the proposed requirements of the NPRM (76 FR 70377, November 14, 2011), and requested an additional design feature that would notify the flight crew when the fuel pump has been automatically shut off if an electrical anomaly is detected or if the fuel tank is empty.

We disagree with the request. When the fuel pump is automatically shut off because of an electrical anomaly, the flight crew will be unable to take any further action to start up the pump, so notifications of this condition to the flight crew would serve no purpose. Electrical failures that automatically shut off the pump are logged for maintenance action after landing to safely restart the pump. We have not changed the final rule regarding this issue.

Request To Revise Cost Estimate

Boeing requested that we revise the cost estimates specified in the NPRM (76 FR 70377, November 14, 2011) to reflect updated fleet size information. American concurred with this request.

We have reviewed the fleet information provided by Boeing, and have revised the estimated costs accordingly in this final rule.

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 70377, November 14, 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 70377, November 14, 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 809 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
Installing design features—for airplanes with center wing and auxiliary tanks (263 airplanes).	50 work-hours × $85 per hour = $4,250.	$35,000	$39,250	$10,322,750
Installing design features—for airplanes with center wing tank (546 airplanes).	35 work-hours × $85 per hour = $2,975.	17,000	19,975	10,906,350

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):

2012–18–05 The Boeing Company: Amendment 39–17181; Docket No. FAA–2011–1229; Directorate Identifier 2011–NM–132–AD.

(a) Effective Date

This AD is effective October 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1) through (c)(8) of this AD, and equipped with center wing fuel tanks and Boeing original equipment manufacturer-installed auxiliary fuel tanks. For airplanes from which the auxiliary fuel tanks have been removed, the actions specified in this AD are not required.

(1) Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes.

(2) Model DC–9–21 airplanes.

(3) Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes.

(4) Model DC–9–41 airplanes.

(5) Model DC–9–51 airplanes.

(6) Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes.

(7) Model MD–88 airplanes.

(8) Model MD–90–30 airplanes.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28: Fuel.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Criteria for Operation

As of 60 months after the effective date of this AD, no person may operate any airplane affected by this AD unless an amended type certificate or supplemental type certificate that incorporates the design features and requirements described in paragraphs (g)(1) and (g)(2) of this AD has been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, and those design features are installed on the airplane.

(1) Each electrically powered fuel pump installed in the center wing tank or auxiliary fuel tank must have a protective device installed to detect electrical faults that can cause arcing and burn through the fuel pump housing. The same device must shut off the pump by automatically removing electrical power from the pump when such faults are detected. When a fuel pump is shut off as the result of detection of an electrical fault, the device must stay latched off until the fault is cleared through maintenance action and verified that the pump and the electrical power feed is safe for operation.

(2) Additional design features must be installed to detect when any center wing tank or auxiliary fuel tank pump is running in an empty fuel tank. The prospective pump shutoff system must shut off each pump no later than 60 seconds after the fuel tank is emptied. The pump shutoff system design must preclude undetected running of a fuel pump in an empty tank, after the pump was commanded off manually or automatically.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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.

(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.

(i) Related Information

For more information about this AD, contact Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on August 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21838 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0222; Directorate Identifier 2011–SW–007–AD; Amendment 39–17166; AD 2012–17–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Eurocopter France Model AS350 helicopters. This AD requires installing protection sleeves over certain forward (pitch) servo-control hydraulic hoses. This AD was prompted by an in-flight fire caused by the ignition of hydraulic fluid leaking from a damaged forward servo-control hydraulic hose. This AD's actions are intended to prevent the forward servo-control hydraulic hoses from becoming damaged and leaking hydraulic fluid that could ignite in flight, which could result in loss of main rotor (M/R) control, power loss, structural damage, propagation of fire, and subsequent loss of control of the helicopter.

DATES: This AD is effective October 11, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of October 11, 2012.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Boulevard, Fort Worth, Texas 76137; telephone (817) 222–5051; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 9, 2012, at 77 FR 14310, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter AS350 B, BA, D, B1, B2, and B3 helicopters with a single hydraulic power system and forward (pitch) servo-control hydraulic hoses part number (P/N) 704A34–412–033 (other reference manufacturer's part number (MP/N) 675–102–05–01) or P/N 704A34–412–035 (other reference MP/N 675–102–06–01) installed. That NPRM proposed to require installing protection sleeves over certain forward servo-control hydraulic hoses. The proposed requirements were intended to prevent the forward servo-control hydraulic hoses from becoming damaged and leaking hydraulic fluid that could ignite in flight. Such an ignition could result in loss of M/R control, power loss, propagation of fire, structural damage, and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2011–0033, dated March 1, 2011 (AD 2011–0033), to correct an unsafe condition for the Eurocopter helicopters. EASA advises that an in-flight fire in the main gearbox compartment occurred on an AS350B2 helicopter. The fire was ''caused by ignition of hydraulic fluid leaking from a hydraulic hose, which had been damaged following an electrical fault in a circuit located in the compartment that is not fire protected. An in-flight fire in the main gearbox compartment during a continued flight, when undetected or if a landing could not be performed immediately, can result in loss of hydraulics, shutdown of the engine because of fire effects, and damage to the Main Rotor (MR) control system.'' This condition, if not prevented, could lead to loss of M/R control, power loss, structural damage, propagation of fire into the cabin or other compartments, and subsequent loss of control of the helicopter. For these reasons, AD 2011–0033 requires installation of protection sleeves on the affected hydraulic hoses.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

FAA's Determination

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

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 29.00.13, dated July 26, 2010, which specifies installing two siliconed glass wool sleeves over both forward main rotor servo-control hydraulic hoses. EASA classified this ASB as mandatory and issued AD 2011–0033 to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 695 helicopters of U.S. Registry and that operators will incur the following costs to comply with this AD:

Disconnecting the servo control hoses, installing the protective sleeves, reconnecting the hoses, and testing for interference requires one work hour at an average labor rate of $85 per hour. Required parts cost $212, for a total cost of $297 for each helicopter. Based upon these costs, we estimate a total cost to the U.S. operator fleet of $206,415.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–17–03 Eurocopter France Helicopters: Amendment 39–17166; Docket No. FAA–2012–0222; Directorate Identifier 2011–SW–007–AD.

(a) Applicability

This AD applies to Eurocopter France Model AS350B, AS350BA, AS350D, AS350B1, AS350B2, and AS350B3 helicopters, certificated in any category, with a single hydraulic power system and either of the following forward (pitch) servo-control hydraulic hoses installed: part number (P/N) 704A34–412–033 (other reference manufacturer's part number (MP/N) 675–102–05–01), or P/N 704A34–412–035 (other reference MP/N 675–102–06–01). Helicopters that have been modified in accordance with modification 074238 are excluded.

(b) Unsafe Condition

This AD defines the unsafe condition as unprotected forward (pitch) servo-control hydraulic hoses, which could become damaged and leak hydraulic fluid that could ignite in flight. This condition could result in loss of main rotor control, power loss, structural damage, propagation of fire into the cabin or other compartments, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective October 11, 2012.

(d) Compliance

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

(e) Required Actions

(1) Within 30 days, install sleeve P/N 706A34–402–225 over hydraulic hose P/N 704A34–412–033 and sleeve P/N 706A34–402–224 over hydraulic hose P/N 704A34–412–035 in accordance with Accomplishment Instructions, paragraph 2.B.2, of Eurocopter Alert Service Bulletin No. 29.00.13, dated July 26, 2010.

(2) Do not install an affected hydraulic hose on any helicopter without a sleeve in accordance with paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Wilbanks, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Boulevard, Fort Worth, Texas 76137, telephone (817) 222–5051, email *matt.wilbanks@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency AD EASA AD No. 2011–0033, dated March 1, 2011.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2900: Hydraulic Power System.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin No. 29.00.13, dated July 26, 2010.

(ii) Reserved.

(3) For Eurocopter service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub.*

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

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

Issued in Fort Worth, Texas, on August 16, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–21261 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1065; Directorate Identifier 2011–NM–007–AD; Amendment 39–17175; AD 2012–17–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 series airplanes. This AD was prompted by reports of water leaking into electrical and electronic equipment in the main equipment center (MEC). This AD requires modifying the floor panels; removing drains; installing floor supports, floor drain trough doublers, drain troughs, and drains; and sealing and taping the floor panels. We are issuing this AD to prevent water from entering the MEC, which could result in an electrical short and potential loss of several functions essential for safe flight.

DATES: This AD is effective October 11, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 11, 2012.

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; phone: 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: Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *Francis.Smith@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 was published in the **Federal Register** on October 11, 2011 (76 FR 62667). That NPRM proposed to require modifying the floor panels; removing drains; installing floor supports, floor drain trough doublers, drain troughs, and drains; and sealing and taping the floor panels.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal (76 FR 62667, October 11, 2011) and the FAA's response to each comment.

Concurrence With NPRM (76 FR 62667, October 11, 2011)

Boeing stated that it has reviewed the NPRM (76 FR 62667, October 11, 2011) and concurs with the contents of the proposed rule.

Request To Withdraw NPRM (76 FR 62667, October 11, 2011): Unsafe Condition Already Addressed

UPS stated it believes the NPRM (76 FR 62667, October 11, 2011) is unnecessary and increases the economic burden on operators because the unsafe condition of water leaking into the MEC is already addressed in AD 2011–16–06, Amendment 39–16764 (76 FR 47427, August 5, 2011). UPS noted that an intact MEC drip shield should prevent water from leaking onto the electronic and electrical equipment, thereby eliminating the need for additional rulemaking.

UPS also noted that it finds the NPRM (76 FR 62667, October 11, 2011) problematic because it establishes an AD-mandated configuration for floor panel sealing in the nose section of Model 747–400BCF and 747–400F airplanes that is different from the floor sealing criteria for the center and aft sections of the same airplanes.

We do not agree with the request to withdraw the NPRM (76 FR 62667, October 11, 2011). While we recognize that most of the airplanes affected by this AD are also affected by AD 2011–16–06, Amendment 39–16764 (76 FR 47427, August 5, 2011), water intrusion into the MEC addressed by the NPRM is in locations and by means different than those addressed by AD 2011–16–06. AD 2011–16–06 addresses water intrusion that migrates through cracked drip shields into the exhaust plenum and the MEC, and affects stations 117 and 118 for certain Model 747–400BCF and 747–400F airplanes. The NPRM addresses water intrusion through main deck panels, fasteners and floor fittings, and affects stations 210 and 530 for certain Model 747–400BCF and –400F airplanes.

We found the safety risk to be sufficient enough to require a specific floor sealing criteria to the affected areas. While a possible loss of uniform floor sealing criteria throughout the airplane may result, this AD action is necessary to adequately address the stated unsafe condition to the vulnerable areas. Operators seeking to establish more uniform floor panel sealing criteria may submit a request for an alternative method of compliance (AMOC) as specified in paragraph (h) of the AD. We have not changed the final rule in this regard.

Request To Withdraw NPRM (76 FR 62667, October 11, 2011): Low Risk of Water Intrusion

In addition, UPS stated that the probability for water intrusion on the forward section of Model 747–400BCF airplanes is overstated because these models do not have a nose cargo door like Model 747–400F airplanes. Therefore, Model 747–400BCF airplanes are not as susceptible to moisture entering the forward area of the main deck cargo compartment during cargo loading in adverse weather conditions.

We do not agree. Both water intrusion safety concerns were studied separately based on reports submitted from multiple operators. The data were reviewed based on the location and causes of the water intrusion. Based on the frequency of reported failures, severity of outcome, and airplane usage, both studies showed an unacceptable and unsafe condition if left uncorrected. Addressing only one source of water intrusion neither precludes nor diminishes the probability of the other. We have not changed the final rule in this regard.

Request To Withdraw NPRM (76 FR 62667, October 11, 2011): Revise Operational Procedures

UPS also stated that proper ground operational procedures will significantly reduce water accumulation in the nose area, either through the main entry door or on pallets or containers.

We infer that UPS requested withdrawal of the NPRM (76 FR 62667, October 11, 2011) in favor of revised ground operational procedures. We do not agree that revising operational procedures to avoid the identified unsafe condition is a consistent or reliable method in precluding what is inherently a safety risk through design. In determining a corrective action, Boeing and the FAA agreed that a design solution, instead of an operational solution, provides the best method to address the identified unsafe condition. No change to the final rule is necessary.

Request To Withdraw NPRM (76 FR 62667, October 11, 2011): Conflict With Aircraft Maintenance Manual (AMM)

UPS also stated that Figures 18 and 23 of Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010, specify that different materials be used in lieu of those called out in Section 53–21–02 of the Boeing Model 747–400 AMM. UPS stated that by not allowing operators to use the AMM, the NPRM (76 FR 62667, October 11, 2011) would put the UPS mechanics in an untenable situation. Mechanics following AMM procedures in the nose area of these two airplanes would unknowingly be altering an AD-mandated configuration.

We do not agree because an AD-mandated configuration always takes precedence over AMMs. When there is a conflict between an AD requirement and service document, the operator must always comply with the requirements of the AD, as explicitly stated in the requirements of Federal Aviation Regulations 14 CFR 39.27. We have not changed the final rule in this regard.

Request To Allow Alternative Floor Sealing Procedures

UPS noted that it and other operators have developed improved alternative floor panel sealing procedures based on years of operational experience with cargo aircraft. UPS stated that the NPRM (76 FR 62667, October 11, 2011) would mandate a Boeing floor sealing procedure that appears optimized for passenger aircraft flooring, which is not as effective as the procedures UPS uses today. UPS noted that this situation creates more of a regulatory problem with maintaining an AD-mandated condition than a safety of flight condition, as there are many ways to adequately seal the floor panels to prevent moisture intrusion. UPS noted that obtaining an alternative method of compliance (AMOC) approval for a floor sealing procedure presents another undue regulatory burden on operators.

We recognize the different methods operators currently use for floor panel sealing procedures to mitigate this safety concern. However, the frequency of failures reported when using these different methods underscores the importance of providing an acceptable method for operators to follow in reducing the safety risk. Under the provisions of paragraph (h) of the final rule, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that alternative method of sealing floor panels to prevent moisture intrusion would provide an acceptable level of safety. We have not changed the final rule in this regard.

Request for Revised Service Information

UPS submitted the following list of technical errors found in Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010, and requested that a revision to this service information be issued to address them.

- The fastener quantities specified in the fastener table in figure 7 are incorrect.
- Figure 17 specifies installing the modified floor panels with new fasteners, followed by figure 18, which specifies removing and reinstalling all floor panels between station 140 and station 640. Figure 18 should specify excluding those floor panels installed as shown in figure 17.
- Figure 8, Detail G, and figure 14, Detail K, should show the doubler and the support, not just the doubler.

We acknowledge and agree that there are certain technical errors identified in the figures of Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010. We have contacted Boeing and it has acknowledged the list of technical issues identified. We consider Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010, adequate to address the identified unsafe condition; and this service information was validated by Boeing on an airplane. Different operators may see different numbers of necessary fasteners and will have to submit an AMOC if their configuration deviates from Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010, instructions. Boeing stated it will address the issues in a Boeing service bulletin revision or other service document to provide clarity in the work steps. We have not changed the final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 12 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
Floor panel reworking and sealing; installing drains, drain trough doublers, and drain troughs.	Up to 644 work-hours × $85 per hour = $54,740.	$64,033	Up to $118,773	Up to $1,425,276.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–17–12 The Boeing Company: Amendment 39–17175; Docket No. FAA–2011–1065; Directorate Identifier 2011–NM–007–AD.

(a) Effective Date

This AD is effective October 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 25, Equipment and Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of water leaking into electrical and electronic equipment in the main equipment center. We are issuing this AD to prevent water from entering the main equipment center, which could result in an electrical short and potential loss of several functions essential for safe flight.

(f) Compliance

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

(g) Floor Panel Sealing

Within 24 months after the effective date of this AD: Modify the floor panels; remove drains; install floor supports, floor drain trough doublers, drain troughs, and drains; and seal and tape the floor panels; at the applicable locations; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010.

(h) 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.

(i) Related Information

For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *Francis.Smith@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 747–25–3586, dated November 12, 2010.

(ii) Reserved.

(3) 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; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(4) You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, 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 NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 22, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21289 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0633; Directorate Identifier 2012–CE–018–AD; Amendment 39–17170; AD 2012–17–07]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive voids in the adhesive joint between the center wing spars and the

upper center wing skins. This condition could cause the wing to fail, which could result in loss of control of the airplane. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective October 11, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 11, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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 service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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 was published in the **Federal Register** on June 15, 2012 (77 FR 35890). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During conversion of a DA 42 to a DA 42 NG, voids were detected in the adhesive joint between the centre wing spars and the upper centre wing skins, between the fuselage wall and the engine nacelle. The available information indicates that wings with voids continue to meet the certification design limits, provided the voids are within established criteria.
>
> However, to detect any wings that may have voids exceeding these criteria, Diamond has issued Mandatory Service Bulletin (MSB) 42–092 and MSB 42NG–022 (single document) that describes instructions for inspection of the aeroplanes that had these wings installed during manufacture. Aeroplanes that have voids within the inspection criteria may continue to operate without restriction, pending the outcome of ongoing investigations. Aeroplanes that have voids exceeding the inspection criteria must be repaired.
>
> For reasons described above, the EASA AD required the inspection of the affected aeroplanes to measure the voids in the adhesive joint between the centre wing spars and the upper centre wing skins, the reporting of all findings to Diamond Aircraft Industries and the repair of any voids exceeding the criteria as specified in the MSB.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 35890, June 15, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 35890, June 15, 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 35890, June 15, 2012).

Costs of Compliance

We estimate that this AD will affect 172 products of U.S. registry. We also estimate that it will take about 2 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 on U.S. operators to be $29,240, or $170 per product.

In addition, we estimate that any necessary follow-on actions will take about 10 work-hours, for a cost of $850 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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 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.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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:

2012–17–07 Diamond Aircraft Industries GmbH: Amendment 39–17170; Docket No. FAA–2012–0633; Directorate Identifier 2012–CE–018–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes: serial numbers 42.006 through 42.008, 42.010, 42.012 through 42.014, 42.016 through 42.033, 42.035 through 42.043, 42.045, 42.046, 42.048 through 42.051, 42.053, 42.055 through 42.059, 42.061 through 42.081, 42.083 through 42.093, 42.096 through 42.097, 42.099 through 42.120, 42.122 through 42.125, 42.127 through 42.148, 42.150 through 42.170, 42.172 through 42.176, 42.178, 42.179, 42.181 through 42.200, 42.202 through 42.224, 42.AC001 through 42.AC028, and 42.AC030 through 42.AC052, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57, Wings.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive voids in the adhesive joint between the center wing spars and the upper center wing skins. We are issuing this AD to prevent wing failure, which could result in loss of control of the airplane.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 100 hours time-in-service (TIS) after October 11, 2012 (the effective date of this AD) or within the next 3 months after October 11, 2012 (the effective date of this AD), whichever occurs first, inspect the adhesive joint between the center wing spars and the upper center wing skin following Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092, WI–MSB–42NG–22, dated May 20, 2011, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–092, MSB 42NG–022, dated May 20, 2011.

(2) Within 30 days after the inspection required in paragraph (f)(1) of this AD, using Appendix A of Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092, WI–MSB–42NG–22, dated May 20, 2011, report the results of the inspection to Diamond Aircraft Industries GmbH at the address in paragraph (i)(3) of this AD.

(3) If, during the inspection required in paragraph (f)(1) of this AD, voids are detected that exceed the criteria specified in Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092, WI–MSB–42NG–22, dated May 20, 2011, before further flight, repair the airplane following Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092, WI–MSB–42NG–22, dated May 20, 2011, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–092, MSB 42NG–022, dated May 20, 2011.

(4) For the purpose of compliance with paragraph (f)(3) of this AD, a single positioning flight is allowed to a location where the repair can be done following the provisions specified in Section III.1 of Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092, WI–MSB–42NG–22, dated May 20, 2011.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0100, dated May 26, 2011; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–092, MSB 42NG–022, dated May 20, 2011; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092, WI–MSB–42NG–22, dated May 20, 2011, for related information.

(i) Material Incorporated by Reference

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

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

(i) Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–092, MSB 42NG–022, dated May 20, 2011.

(ii) Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092, WI–MSB–42NG–22, dated May 20, 2011.

(3) For Diamond Aircraft Industries GmbH service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.*

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

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

Issued in Kansas City, Missouri, on August 21, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21653 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0489; Directorate Identifier 2011–NM–229–AD; Amendment 39–17174; AD 2012–17–11]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all BAE SYSTEMS (Operations) Limited Model 4101 airplanes. This AD was prompted by reports that the fire extinguisher in the toilet vanity unit needs to be mounted vertically rather than horizontally. This AD requires inspecting to determine if a certain fire extinguisher bottle is installed, and repositioning the affected fire extinguisher bottle to the vertical position. We are issuing this AD to detect and correct the orientation of the fire extinguisher bottle in the toilet vanity unit to the vertical position, which if not corrected, could result in a toilet waste bin fire spreading, and consequent damage to the airplane and injury to its occupants.

DATES: This AD becomes effective October 11, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 11, 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 20590.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–1175; 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 May 21, 2012 (77 FR 29914). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The Jetstream 4100 is equipped with a fire extinguisher that, if a fire is detected, discharges into the waste bin located within the toilet vanity unit.
>
> On the majority of aeroplanes, the furnishing vendor's original design installs the fire extinguisher bottle part number (P/N) BA20509AM–4 in a horizontal position within the vanity unit. BAE Systems have subsequently been informed by the fire extinguisher manufacturer that the fire extinguisher bottle should be mounted vertically, as its operation cannot be guaranteed when mounted horizontally. In the event of a fire in the waste bin the extinguishant may not fully discharge from the fire extinguisher bottle.
>
> This condition, if not corrected, could result in a toilet waste bin fire propagation and consequent damage to the aeroplane and/or injury to its occupants.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires [an inspection to determine if a certain fire extinguisher is installed and] the repositioning of the fire extinguisher bottle from a horizontal orientation to a vertical orientation.

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 received no comments on the NPRM (77 FR 29914, May 21, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 29914, May 21, 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 29914, May 21, 2012).

Costs of Compliance

We estimate that this AD will affect 4 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. Required parts will cost about $170 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $3,400, or 850 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 29914, May 21, 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:

2012–17–11 BAE SYSTEMS (Operations) Limited: Amendment 39–17174. Docket No. FAA–2012–0489; Directorate Identifier 2011–NM–229–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE SYSTEMS (Operations) Limited Model 4101 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by reports that the fire extinguisher of the toilet vanity unit needs to be mounted vertically, rather than horizontally. We are issuing this AD to detect and correct the orientation of the fire extinguisher bottle in the toilet vanity unit to the vertical position, which if not corrected, could result in a toilet waste bin fire spreading, and consequent damage to the airplane and injury to its occupants.

(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) Actions

Within 2 months after the effective date of this AD, determine from the table specified in paragraph 2.A.(1) of BAE SYSTEMS (Operations) Limited Service Bulletin J41–26–008, Revision 2, dated September 20, 2011, if fire extinguisher bottle part number (P/N) BA20509AM–4 is fitted to the airplane. If a fire extinguisher bottle P/N BA20509AM–4 is fitted, before further flight, reposition the fire extinguisher bottle, in accordance with the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Service Bulletin J41–26–008, Revision 2, dated September 20, 2011.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using BAE SYSTEMS (Operations) Limited Service Bulletin J41–26–008, dated October 5, 2010; or BAE SYSTEMS (Operations) Limited Service Bulletin J41–26–008, Revision 1, dated April 12, 2011.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–1175; fax: (425) 227–1149.

Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0194, dated October 6, 2011; and BAE SYSTEMS (Operations) Limited Service Bulletin J41–26–008, Revision 2, dated September 20, 2011; for related information.

(k) Material Incorporated by Reference

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

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

(i) BAE SYSTEMS (Operations) Limited Service Bulletin J41–26–008, Revision 2, dated September 20, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact BAE SYSTEMS (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

(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 August 22, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21288 Filed 9–5–12; 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; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule: technical amendment, correction.

SUMMARY: This action corrects the geographic coordinates in the airspace description of a final rule, published in the **Federal Register** on July 10, 2012, amending controlled airspace at Lakehurst Naval Support Activity/Maxfield Field (Joint Base McGuire-Dix-Lakehurst).

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:

History

On July 10, 2012, the FAA published a final rule, in the **Federal Register** changing the name of the airport associated with the Class D and E airspace at Lakehurst, NJ, to Lakehurst Naval Support Activity/Maxfield Field (Joint Base McGuire-Dix-Lakehurst) (77 FR 40488). After publication, the FAA found that the geographic coordinates of the airport and Lakehurst (Navy) NDB navigation aid need to be adjusted to be in concert with the FAAs aeronautical database. This action makes the administrative adjustment that does not affect the altitude, boundaries, or operating requirements of the airspace. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class D and E airspace designations are published in Paragraphs 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 E airspace designations listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates listed in the airspace designation of the Class D and Class E airspace areas for Lakehurst Naval Support Activity/Maxfield Field (Joint Base McGuire-Dix-Lakehurst), and the Lakehurst (Navy) NDB, Lakehurst, NJ, as published in the **Federal Register** of July 10, 2012, (77 FR 40488), FR Doc. 2012–16674, are corrected as follows:

* * * * *

AEA NJ D Lakehurst, NJ [Corrected]

Lakehurst Naval Support Activity/Maxfield Field, NJ (Joint Base McGuire-Dix-Lakehurst)

On page 40488, column 3, line 27, remove, ''lat. 40°02′00″ N., long. 74°21′13″ W'', and insert ''lat. 40°02′09″ N., long. 74°21′05″ W''.

* * * * *

AEA NJ E4 Lakehurst, NJ [Corrected]

Lakehurst Naval Support Activity/Maxfield Field, NJ (Joint Base McGuire-Dix-Lakehurst)

On page 40488, column 3, line 45, remove ''lat. 40°02′00″ N., long. 74°21′13″ W'', and insert ''lat. 40°02′09″ N., long. 74°21′05″ W'', and on page 40488, column 3, line 47, under Lakehurst (Navy) NDB, remove ''lat. 40°02′41″ N., long. 74°20′09″ W'' and insert ''lat. 40°02′42″ N., long. 74°20′08″ W''

Issued in College Park, Georgia, on August 24, 2012.

Barry A. Knight,

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

[FR Doc. 2012–21830 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0749; Airspace Docket No. 11–ANM–29]

RIN 2120–AA66

Revocation of Jet Route J–528; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Jet Route J–528 because the route is too short to serve a useful navigation or air traffic control purpose and is causing flight plan rejections in the air traffic control automation system.

DATES: Effective date 0901 UTC, November 15, 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

Jet Route J–528 is currently depicted on United States High Altitude En Route Navigation charts as a three-mile long segment that extends between the Whatcom, WA, VORTAC and the United States/Canadian border. J–528 is described in FAA Order 7400.9V as extending from Whatcom, WA, to Williams Lake, BC, Canada, excluding the airspace within Canada. The current FAA air traffic control automation system does not recognize J–528 beyond the Seattle Air Route Traffic Control Center and Vancouver Area Control Center boundary. This results in numerous rejected international flight plans and additional air traffic controller workload. Since J–528 parallels another existing Jet Route, J–534 that originates in U.S. airspace and proceeds to Williams Lake, BC, Canada, removing J–528 will not adversely affect NAS operations. In addition, NavCanada has advised that the designator J–528 is used for a route that exists entirely within Canadian airspace.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by removing Jet Route J–528 in Washington state. Due to its short length, the route serves no useful navigation or air traffic control purpose and causes flight plan error problems for the air traffic control automation system. Another Jet Route, J–534, that already exists through the same area, provides routing into Canada; therefore, removing J–528 will not result in any adverse impact to the NAS.

Because this action removes a redundant route segment that does not serve a useful navigation purpose, but causes problems for the air traffic control automation system, I find that notice and public procedures under 5 U.S.C. 553(b) are impractical and contrary to the public interest.

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 a Jet Route that no longer serves a purpose in the NAS.

Jet routes are published in paragraph 2004 of FAA Order 7400.9V, signed August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be removed subsequently from the Order.

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 2004 Jet Routes.

* * * * *

J–528 [Removed]

Issued in Washington, DC, on August 22, 2012.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2012–21842 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–9353; 34–67747; 39–2485; IC–30185]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The revisions are being made primarily to support submission of Confidential Registration Statements; require Form ID authentication documents in PDF format; automate LTID generation for Large Trader registrations; support minor updates to Form D; remove superseded XBRL Taxonomies; remove the OMB expiration date from Form TA–1, TA–2, TA–W, 25–NSE; and request of unused funds. The EDGAR system is scheduled to be upgraded to support this functionality on July 2, 2012.

DATES: *Effective Date:* September 6, 2012. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of September 6, 2012.

FOR FURTHER INFORMATION CONTACT: In the Division of Corporation Finance, for questions on Confidential Registration Statement, Form ID, and Forms D contact Jeffrey Thomas, Office of Information Technology, at (202) 551–3600; in the Division of Risk, Strategy, and Financial Innovation for questions concerning XBRL Taxonomies contact Walter Hamscher, at (202) 551–5397; in the Division of Trading and Markets for questions concerning Form 13H contact Richard R. Holley III, at (202) 551–5614, for questions concerning Form TA contact Kenneth Riitho, at (202) 551–5592; and in the Office of Information Technology, contact Rick Heroux, at (202) 551–8800.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site. We also are making conforming changes to Rules 10[2] and 101[3] of Regulation S–T[4] relating to the Form ID authentication process.

The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: ''General Information,'' Version 13 (July 2012) and Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 20 (July 2012). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[5] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[6]

The EDGAR system will be upgraded to Release 12.1 on July 2, 2012 and will introduce the following changes: EDGAR will be updated to support submission of confidential draft registration statements for companies that qualify either under the JOBS Act or the Division of Corporate Finance's foreign private issuer policy. Draft registration statements and amendments must be submitted using submission form types DRS and DRS/A. These confidential submission types can be accessed from the EDGAR Filing Web site, by selecting the ''Draft Reg. Statement'' link. New filers may select the ''Access Codes will be used to submit draft registration'' option on the Form ID application to indicate that they are submitting an application for EDGAR access to file Draft Registration Statements. If the filers already have an assigned EDGAR Central Index Key (CIK), then they must use the existing CIK.

EDGAR and Regulation S–T will require the authenticating document for Form ID submissions to be submitted in

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on March 30, 2012. *See* Release No. 33–9303 (March 26, 2012) [77 FR 19077].

[2] 17 CFR 232.10.

[3] 17 CFR 232.101.

[4] 17 CFR Part 232.

[5] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[6] *See* Release No. 33–9303 (March 26, 2012) [77 FR 19077] in which we implemented EDGAR Release 12.0. For additional history of Filer Manual rules, please see the cites therein.

electronic format as a Portable Document Format (PDF) attachment. Filers would no longer be permitted to fax the Form ID authentication documents for new requests to apply for EDGAR access, update passphrase, convert paper only filer to electronic filer, and access for new serial companies.[7]

EDGAR will assign a unique Large Trader identification (''LTID'') number to any person or entity that files a new Form 13H initial filing. The acceptance email notification that EDGAR sends to the filer will include the assigned LTID number. On future 13H–A and 13H–Q filings, the system will pre-populate the previously assigned LTID number which will be unalterable by the registrant.

In addition, Form 13H's Taxpayer Identification Number field will accept a nine-digit Social Security Number if a filer does not have a ten-digit Taxpayer Identification Number without requiring the filer to use a placeholder digit. For Item 1(a), if filers indicate Investment Adviser as their business, they can further indicate their type of advisory business to involve ''Registered Investment Companies'' and/or ''Hedge Funds or other Funds not registered under the Investment Company Act.'' This field, which currently allows only one of these two options to be selected, will now allow both options to be selected. Finally, the OMB Number and the Paperwork Reduction Act Disclosures on the Instructions page of Form 13H will be updated.

EDGAR will no longer support US GAAP Taxonomy 1.0, US Financial Reporting Taxonomy Framework (USFRTF) 2005, US GAAP Taxonomy 2009, US Schedule of Investments (SOI) Taxonomy 2008, Risk Return Taxonomy 2008, and Risk Return Taxonomy 2006.

Form D screens and instructions will be updated for Item 6 to replace the reference to ''Securities Act Section 4(6)'' with ''Securities Act Section 4(5)'' as per Release No. 33–9287.

The OMB expiration date will no longer be displayed on the Forms TA–1, TA–2, TA–W, and 25–NSE. These forms will continue to display other OMB Approval information. In addition, Forms 3, 4, and 5 will no longer refer to Public Utility Holding Company Act (PUHCA).

Filers will be able to view their account balance along with the date and amount of their most recent deposit. Filers will also able to view their account activity statement for the previous twelve months. Additionally, filers will be able to request the return of unused funds. These options will be available on the 'Retrieve/Edit Company and Submission Data' functionality of the EDGAR Filing Web site.

The deployment of EDGAR Release 12.0.1, originally planned for July 9, 2012 to implement an online version of Form N–SAR, is being delayed until the fourth quarter of this calendar year. The specific deployment date will be announced on the Commission's public Web site's ''Information for EDGAR Filers'' page (*http://www.sec.gov/info/edgar.shtml*). Filers should continue to use the EDGAR Filer Manual, Volume III: N–SAR Supplement to file their N–SAR submissions. When the online version of Form N–SAR is deployed, EDGAR Filer Manual, Volume III: N–SAR Supplement will be retired. Instructions to file the online version of Form N–SAR addressed in Chapter 9 of EDGAR Filer Manual, Volume II: EDGAR Filing should then be followed.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Room 1543, Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.*

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[8] It follows that the requirements of the Regulatory Flexibility Act[9] do not apply.

The effective date for the updated Filer Manual and the rule amendments is September 6, 2012. In accordance with the APA,[10] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 12.1 is scheduled to become available on July 2, 2012. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[11] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[12] Section 319 of the Trust Indenture Act of 1939,[13] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[14]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.10 is amended by revising paragraph (b)(2), to read as follows:

§ 232.10 Application of part 232.

* * * * *

(b) * * *

(2) File, by uploading as a Portable Document Format (PDF) attachment to the Form ID filing, a notarized document, manually signed by the applicant over the applicant's typed signature, that includes the information required to be included in the Form ID filing and confirms the authenticity of the Form ID filing.

* * * * *

■ 3. Section 232.101 is amended by revising paragraph (a)(1)(ix), to read as follows:

[7] In addition to changing the Filer Manual provisions, we also are amending Rule 10(b)(2) [17 CFR 232.10(b)(2)] and Rule 101(a)(1)(ix) [17 CFR 232.101(a)(1)(ix)] of Regulation S–T to eliminate references to faxing the required authentication document.

[8] 5 U.S.C. 553(b).

[9] 5 U.S.C. 601–612.

[10] 5 U.S.C. 553(d)(3).

[11] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[12] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[13] 15 U.S.C. 77sss.

[14] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(ix) Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter); the Form ID authenticating document required by Rule 10(b) of Regulation S–T (§ 232.10(b)) also shall be filed in electronic format as an uploaded Portable Document Format (PDF) attachment to the Form ID filing. Other related correspondence and supplemental information submitted after the Form ID filing shall not be submitted in electronic format;

* * * * *

■ 4. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 13 (July 2012). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 20 (July 2012). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

By the Commission.

Dated: August 29, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–21805 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

19 CFR Part 4

Vessels in Foreign and Domestic Trades

CFR Correction

In Title 19 of the Code of Federal Regulations, Parts 1 to 99, revised as of April 1, 2012, on page 14, in § 4.7, paragraph (b)(4) introductory text is corrected to read as follows;

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance electronic filing of cargo declaration.

* * * * *

(b) * * *

(4) Carriers of bulk cargo as specified in paragraph (b)(4)(i) of this section and carriers of break bulk cargo to the extent provided in paragraph (b)(4)(ii) of this section are exempt, with respect only to the bulk or break bulk cargo being transported, from the requirement set forth in paragraph (b)(2) of this section that an electronic cargo declaration be received by CBP 24 hours before such cargo is laden aboard the vessel at the foreign port. With respect to exempted carriers of bulk or break bulk cargo operating voyages to the United States, CBP must receive the electronic cargo declaration covering the bulk or break bulk cargo they are transporting 24 hours prior to the vessel's arrival in the United States (see § 4.30(n)). However, for any containerized or non-qualifying break bulk cargo these exempted carriers will be transporting, CBP must receive the electronic cargo declaration 24 hours in advance of loading.

* * * * *

[FR Doc. 2012–21999 Filed 9–5–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9598]

RIN 1545–BK98

Integrated Hedging Transactions of Qualifying Debt

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations that address certain integrated transactions that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The regulations provide that if a taxpayer has identified multiple hedges as being part of a qualified hedging transaction, and the taxpayer has terminated at least one but less than all of the hedges (including a portion of one or more of the hedges), the taxpayer must treat the remaining hedges as having been sold for fair market value on the date of disposition of the terminated hedge. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date.* These regulations are effective on September 6, 2012.

Applicability Date. These regulations apply to leg-outs within the meaning of § 1.988–5(a)(6)(ii) which occur on or after September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy, at (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1.988–5 provides detailed rules that permit the integration of a qualifying debt instrument with a § 1.988–5(a) hedge. The effect of integration under the regulations is to create a synthetic debt instrument. Generally, if a taxpayer enters into a qualified hedging transaction and meets the requirements of the regulations, no exchange gain or loss is recognized on the debt instrument or the hedge for the period that it is part of a qualified hedging transaction (provided that the synthetic debt instrument is not denominated in a nonfunctional currency). See § 1.988–5(a)(9). A qualified hedging transaction is an integrated economic transaction

consisting of a qualifying debt instrument and a § 1.988–5(a) hedge. See § 1.988–5(a)(1). A qualifying debt instrument is any debt instrument described in § 1.988–1(a)(2)(i) regardless of its denominated currency. See § 1.988–5(a)(3). A § 1.988–5(a) hedge is a spot contract, futures contract, forward contract, option contract, notional principal contract, currency swap contract, or similar financial instrument, or series or combinations of such instruments, that when integrated with a qualifying debt instrument permits the calculation of a yield to maturity in the currency in which the synthetic debt instrument is denominated. See § 1.988–5(a)(4).

Under § 1.988–5(a)(6)(ii), a taxpayer that disposes of all or a part of the qualifying debt instrument or hedge prior to the maturity of the qualified hedging transaction, or that changes a material term of the qualifying debt instrument or hedge, is viewed as ''legging out'' of integrated treatment. One of the consequences of legging out is that if the hedge is disposed of, the qualifying debt instrument is treated as sold for its fair market value on the date of disposition of the hedge (leg-out date). See § 1.988–5(a)(6)(ii)(B). Any gain or loss on the qualifying debt instrument from the date of identification to the leg-out date is recognized on the leg-out date. The intended result of this deemed disposition rule is that the gain or loss on the qualifying debt instrument will generally be offset by the gain or loss on the hedge.

The Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) have become aware that some taxpayers who are in a loss position with respect to a qualifying debt instrument that is part of a qualified hedging transaction are interpreting the legging-out rules of § 1.988–5(a)(6)(ii)(B) to permit the recognition of the loss on the debt instrument without recognition of all of the corresponding gain on the hedging component of the transaction. Taxpayers claim to achieve this result by hedging nonfunctional currency debt instruments with multiple financial instruments and selectively disposing of less than all of these positions. Taxpayers take the position that § 1.988–5(a)(6)(ii)(B) triggers the entire loss in the qualifying debt instrument but not the gain in the remaining components of the hedging side of the integrated transaction.

For example, a taxpayer may fully hedge a fixed rate nonfunctional currency denominated debt instrument that it has issued with two swaps—a nonfunctional currency/dollar currency swap and a fixed for floating dollar interest rate swap. The effect of matching the currency swap with the foreign currency denominated debt is to create synthetic fixed rate U.S. dollar debt while the effect of the interest rate swap is to simultaneously transform the synthetic fixed rate U.S. dollar debt into synthetic floating rate U.S. dollar debt. Thus, assuming that the rules of § 1.988–5(a) are otherwise satisfied, the taxpayer will have effectively converted the fixed rate foreign currency denominated debt instrument into a synthetic floating rate U.S. dollar denominated debt instrument.

As the U.S. dollar declines in value relative to the foreign currency in which the debt instrument is denominated, the taxpayer disposes of the interest rate swap while keeping the currency swap in existence. The taxpayer takes the position that the disposition of the interest rate swap allows it to treat the debt instrument as having been terminated on the date of disposition and claims a loss on the debt instrument without taking into account the offsetting gain on the remaining component of the hedge. Thus, the taxpayer claims the transaction generates a net loss. The IRS and the Treasury Department believe that these results are inappropriate under the legging-out rules since the claimed loss is largely offset by unrealized gain on the remaining component of the hedging transaction. Therefore, the IRS and the Treasury Department are issuing these regulations to clarify the rules regarding the consequences of legging-out of qualified hedging transactions that consist of multiple components. No inference is intended regarding the merits of the position taken by the taxpayer with respect to the transaction described above (or comparable positions taken by taxpayers with respect to similar transactions) in the case of transactions occurring prior to the applicability date of these regulations, and in appropriate cases the IRS may challenge the claimed results.

Explanation of Provisions

Section 1.988–5(a) is amended to provide that if a hedge with more than one component has been properly identified as being part of a qualified hedging transaction, and at least one but not all of the components of the hedge that is a part of the qualified hedging transaction has been terminated or disposed of, all of the remaining components of the hedge (as well as the qualifying debt) shall be treated as sold for their fair market value on the leg-out date of the terminated hedge. Similarly, if a part of any component of a hedge (whether a hedge consists of a single or multiple components) has been disposed of, the remaining part of that component (as well as other components in the case of a hedge with multiple components) that is still in existence (as well as the qualifying debt instrument) shall be treated as sold for its fair market value on the leg-out date of the terminated hedge.

Effective/Applicability Date

The regulation applies to leg-outs within the meaning of § 1.988–5(a)(6)(ii) which occur on or after September 6, 2012.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Sheila Ramaswamy, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.988–5 is amended by:

■ 1. Revising paragraph (a)(6)(ii).

■ 2. Adding *Example 11* in paragraph (a)(9)(iv).

The revision and addition read as follows:

§ 1.988–5 Section 988(d) hedging transactions.

(a) * * *

(6) * * *

(ii) [Reserved]. For further guidance see § 1.988–5T(a)(6)(ii).

* * * * *

(9) * * *

(iv) * * *

Example 11. [Reserved]. For further guidance see § 1.988–5T(a)(9)(iv).

Example 11.

* * * * *

■ **Par. 3.** Section 1.988–5T is added to read as follows:

§ 1.988–5T Section 988(d) hedging transactions (temporary).

(a) through (a)(6)(i) [Reserved]. For further guidance see § 1.988–5(a) through (a)(6)(i).

(ii) *Legging out.* With respect to a qualifying debt instrument and hedge that are properly identified as a qualified hedging transaction, ''legging out'' of integrated treatment under this paragraph (a) means that the taxpayer disposes of or otherwise terminates all or any portion of the qualifying debt instrument or the hedge prior to maturity of the qualified hedging transaction, or the taxpayer changes a material term of the qualifying debt instrument (for example, exercises an option to change the interest rate or index, or the maturity date) or the hedge (for example, changes the interest or exchange rates underlying the hedge, or the expiration date) prior to maturity of the qualified hedging transaction. A taxpayer that disposes of or terminates a qualified hedging transaction (that is, disposes of or terminates both the qualifying debt instrument and the hedge in their entirety on the same day) shall be considered to have disposed of or otherwise terminated the synthetic debt instrument rather than legging out. If a taxpayer legs out of integrated treatment, the following rules shall apply:

(A) The transaction will be treated as a qualified hedging transaction during the time the requirements of this paragraph (a) were satisfied.

(B) If all of the instruments comprising the hedge (each such instrument, a component) are disposed of or otherwise terminated, the qualifying debt instrument shall be treated as sold for its fair market value on the date the hedge is disposed of or otherwise terminated (the leg-out date), and any gain or loss (including gain or loss resulting from factors other than movements in exchange rates) from the identification date to the leg-out date is realized and recognized on the leg-out date. The spot rate on the leg-out date shall be used to determine exchange gain or loss on the debt instrument for the period beginning on the leg-out date and ending on the date such instrument matures or is disposed of or otherwise terminated. Proper adjustment must be made to reflect any gain or loss taken into account. The netting rule of § 1.988–2(b)(8) shall apply.

(C) If a hedge has more than one component (and such components have been properly identified as being part of the qualified hedging transaction) and at least one but not all of the components that comprise the hedge has been disposed of or otherwise terminated, or if part of any component of the hedge has been terminated (whether a hedge consists of a single or multiple components), the date such component (or part thereof) is disposed of or terminated shall be considered the leg-out date and the qualifying debt instrument shall be treated as sold for its fair market value in accordance with the rules of paragraph (a)(6)(ii)(B) of this section on such leg-out date. In addition, all of the remaining components (or parts thereof) that have not been disposed of or otherwise terminated shall be treated as sold for their fair market value on the leg-out date, and any gain or loss from the identification date to the leg-out date is realized and recognized on the leg-out date. To the extent relevant, the spot rate on the leg-out date shall be used to determine exchange gain or loss on the remaining components (or parts thereof) for the period beginning on the leg-out date and ending on the date such components (or parts thereof) are disposed of or otherwise terminated.

(D) If the qualifying debt instrument is disposed of or otherwise terminated in whole or in part, the date of such disposition or termination shall be considered the leg-out date. Accordingly, the hedge (including all components making up the hedge in their entirety) that is part of the qualified hedging transaction shall be treated as sold for its fair market value on the leg-out date, and any gain or loss from the identification date to the leg-out date is realized and recognized on the leg-out date. To the extent relevant, the spot rate on the leg-out date shall be used to determine exchange gain or loss on the hedge (including all components thereof) for the period beginning on the leg-out date and ending on the date such hedge is disposed of or otherwise terminated.

(E) Except as provided in paragraph (a)(8)(iii) of this section (regarding identification by the Commissioner), the part of the qualified hedging transaction that has not been terminated (that is, the remaining debt instrument in its entirety even if partially hedged, or the remaining components of the hedge) cannot be part of a qualified hedging transaction for any period subsequent to the leg-out date.

(F) If a taxpayer legs out of a qualified hedging transaction and realizes a gain with respect to the disposed of or terminated debt instrument or hedge, then paragraph (a)(6)(ii)(B), (C), and (D) of this section, as appropriate, will not apply if during the period beginning 30 days before the leg-out date and ending 30 days after that date the taxpayer enters into another transaction that, taken together with any remaining components of the hedge, hedges at least 50 percent of the remaining currency flow with respect to the qualifying debt instrument that was part of the qualified hedging transaction or, if appropriate, an equivalent amount under the hedge (or any remaining components thereof) that was part of the qualified hedging transaction. Similarly, in a case in which a hedge has multiple components that are part of a qualified hedging transaction, if the taxpayer legs out of a qualified hedging transaction by terminating one such component or a part of one or more such components and realizes a gain with respect to the terminated component, components, or portions thereof, then paragraphs (a)(6)(ii)(B), (C), and (D) of this section, as appropriate, will not apply if the remaining components of the hedge (including parts thereof) by themselves hedge at least 50 percent of the remaining currency flow with respect to the qualifying debt instrument that was part of the qualified hedging transaction.

(a)(7) through (a)(9)(iv) *Examples 10* [Reserved]. For further guidance see § 1.988–5(a)(7) through (a)(9)(iv) *Example 10.*

Example 11. (i) K is a U.S. corporation with the U.S. dollar as its functional currency. On January 1, 2013, K borrows 100 British pounds (£) for two years at a 10% rate of interest payable on December 31 of each year with no principal payment due until maturity on December 31, 2014. Assume that the spot rate on January 1, 2013, is £1=$1. On the same date, K enters into two swap contracts with an unrelated counterparty that economically results in the transformation of the fixed rate £100 borrowing to a floating rate dollar borrowing. The terms of the swaps are as follows:

(A) *Swap #1, Currency swap.* On January 1, 2013, K will exchange £100 for $100.

(*1*) On December 31 of both 2013 and 2014, K will exchange $8 for £10;

(*2*) On December 31, 2014, K will exchange $100 for £100.

(B) *Swap #2, Interest rate swap.* On December 31 of both 2013 and 2014, K will

pay LIBOR times a notional principal amount of $100 and will receive 8% times the same $100 notional principal amount.

(ii) Assume that K properly identifies the pound borrowing and the swap contracts as a qualified hedging transaction as provided in paragraph (a)(8) of this section and that the other relevant requirements of paragraph (a) of this section are satisfied.

(iii) Assume also that on January 1, 2014, the spot exchange rate is £1:$2; the U.S. dollar LIBOR rate of interest is 9%; and the market value of K's note in pounds has not changed. K terminates swap #2. K will incur a loss of ($.91) (the present value of $1) with respect to the termination of such swap on January 1, 2014. Pursuant to paragraph (a)(6)(ii)(C) of this section, K must treat swap #1 as having been sold for its fair market value on the leg-out date, which is the date swap #2 is terminated. K must realize and recognize gain of $100.92 [the present value of £110 discounted in pounds to equal £100 × $2 ($200) less the present value of $108 ($99.08)]. The loss inherent in the pound borrowing from January 1, 2013 to January 1, 2014 is realized and recognized on January 1, 2014. Such loss is exchange loss in the amount of $100 [the present value of £110 that was to be paid at the end of the year discounted at pound interest rates to equal £100 times the change in exchange rates: (£100 × $1, the spot rate on January 1, 2013) − (£100 × $2, the spot rate on January 1, 2014)]. Except as provided in paragraph (a)(8)(iii) of this section (regarding identification by the Commissioner), the pound borrowing and currency swap cannot be part of a qualified hedging transaction for any period subsequent to the leg-out date.

(iv) Assume the facts are the same as in paragraph (iii) of this section except that on January 1, 2014, the U.S. dollar LIBOR rate of interest is 7% rather than 9%. When K terminates swap #2, K will realize gain of $0.93 (the present value of $1) received with respect to the termination on January 1, 2014. Fifty percent or more of the remaining pound cash flow of the pound borrowing remains hedged after the termination of swap #2. Accordingly, under paragraph (a)(6)(ii)(F) of this section, paragraphs (a)(6)(ii)(B) and (C) of this section do not apply and the gain on swap #1 and the loss on the qualifying debt instrument is not taken into account. Thus, K will include in income $0.93 realized from termination of swap #2.

(a)(10) through (g) [Reserved]. For further guidance see § 1.988–5(a)(10) through (g).

(h) *Effective/applicability date.* This section applies to leg-outs that occur on or after September 6, 2012.

(i) *Expiration date.* This section expires on September 4, 2012.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: August 17, 2012.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–21986 Filed 9–5–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0800]

RIN 1625–AA00

Safety Zone; TriRock San Diego, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon the navigable waters of the San Diego Bay, San Diego, CA, in support of a bay swim in San Diego Harbor. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 6:30 a.m. to 9:30 a.m. on September 9, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0800. 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 Petty Officer Deborah Metzger, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7656, email *d11marineeventssd@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 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) because it would be impracticable to do so with respect to this rule, as the logistical details of the San Diego Bay swim were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

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**. Delaying the effective date would be impracticable and contrary to the public interest, since immediate action is needed to ensure public safety.

B. Basis and Purpose

Competitor Group is sponsoring the TriRock Triathlon, consisting of 2000 swimmers swimming a predetermined course. The sponsor will provide 18 safety vessels including boats, paddle boards, and PWCs for this event. A safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced on September 9, 2012, from 6:30 a.m. to 10 a.m. The limits of the safety zone will be navigable waters of the San Diego Bay behind the San Diego Convention Center bound by the following coordinates including the marina; 32°42′16″ N, 117°09′58″ W to 32°42′15″ N, 117°10′02″ W then south to 32°42′00″ N, 117°09′45″ W to 32°42′03″ N, 117°09′40″ W.

This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear during the bay swim. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone 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 these statutes and 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 determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may be allowed to transit through the designated safety zone during the specified times if they request and obtain authorization from the Captain of the Port, or his 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 term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the aforementioned portion of the San Diego Bay from September 9, 2012, from 6:30 a.m. to 9:30 a.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule impacts only a small area of San Diego Harbor, and will be enforced for only three hours. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

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

■ 2. Add temporary § 165.T11–516 to read as follows:

§ 165.T11–516 Safety Zone; TriRock Triathlon; San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone will be navigable waters of the San Diego Bay behind the San Diego Convention Center bound by the following coordinates including the marina; 32°42′16″ N, 117 °09′58″ W to 32°42′15″ N, 117°10′02″ W then south to 32°42′00″ N, 117°09′45″ W to 32°42′03″ N, 117°09′0″ W.

(b) *Enforcement Period.* This section will be enforced from 6:30 a.m. to 9:30 a.m. on September 9, 2012. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

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

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: August 17, 2012.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2012–21920 Filed 9–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0569]

RIN 1625–AA00

Safety Zone; Head of the Cuyahoga, U.S. Rowing Masters Head Race National Championship, and Dragon Boat Festival, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a temporary safety zone on the Cuyahoga River, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of the Cuyahoga River during the Head of the Cuyahoga, the U.S. Rowing Masters Head Race International Championship, and the Cleveland Dragon Boat Festival. This safety zone is necessary to protect spectators, participants, and vessels from the hazards associated with rowing regattas.

DATES: This rule is effective from 7 a.m. on September 15, 2012, until 4 p.m. on September 16, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [USCG–2012–0569]. 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 rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@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

On July 3, 2012, we published a Notice of Proposed Rulemaking (NPRM) entitled Safety Zone; Head of the Cuyahoga and U.S. Rowing Masters Head Race National Championship, Cuyahoga River, Cleveland, OH in the **Federal Register** (77 FR 39453). We received 2 comments on the proposed rule, although both were made by a single organization—the Lake Carriers' Association (LCA). The LCA's comments are addressed below. No public meeting was requested, and none was held.

B. Basis and Purpose

Between 7 a.m. and 4 p.m. on September 15, 2012, the annual Head of the Cuyahoga rowing regatta will take place on the Cuyahoga River in Cleveland, OH. In conjunction with the HOTC, the Cleveland Dragon Boat Festival will take place just north of the Detroit Superior Viaduct Bridge on the Cuyahoga River, Cleveland, OH.

Following the HOTC and the Cleveland Dragon Boat Festival on the 15th of September, the U.S. Rowing Masters Head Race National Championship will take place on September 16th along the same portion of the Cuyahoga River.

The Captain of the Port Buffalo has determined that the HOTC, the U.S. Rowing Masters Head Race National Championship, and the Cleveland Dragon Boat Festival rowing events

present significant hazards to public spectators and participants.

C. Discussion of Comments, Changes, and the Final Rule

As mentioned above, the Coast Guard received two comments from the LCA in response to the NPRM published on July 3, 2012. One comment was presented directly to the Coast Guard's Marine Safety Unit (MSU) in Cleveland, OH on or about July 6, 2012. The other comment was submitted online on July 24, 2012. The comment submitted online is available in the docket. In sum, both LCA comments convey a concern about the effects that this safety zone will have on its members ability to enter the port and transit the Cuyahoga river. The LCA's online comment expresses a general dissatisfaction with ''lengthy closures of commercial waterways'' and a specific disagreement with this safety zone's proposed ten (10) hour closure of the river. Particularly, the LCA claims that the proposed ten (10) hour closure is one (1) hour longer than required by the race sponsors.

In response to the above comments, the Captain of the Port Buffalo consulted with the event sponsor to reassess the necessary enforcement times of this safety zone. Consequently, the Captain of the Port Buffalo has decided to shorten the length of the enforcement period. Previously, the NPRM proposed that the safety zone would be enforced from 6:30 a.m. until 4:30 p.m. on September 15 and 16, 2012. Now, in light of the LCA's concerns, this temporary final rule establishes an enforcement period from 7 a.m. until 4 p.m. on those same dates.

As discussed in the NPRM, this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Head of the Cuyahoga, U.S. Rowing Masters Head Race National Championship, and the Cleveland Dragon Boat Festival. As mentioned above, the safety zone will be effective and enforced from 7 a.m. until 4 p.m. on September 15 and 16, 2012.

The safety zone will encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn perpendicular from position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge, north to the Detroit-Superior Viaduct bridge.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo 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 and 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 relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. 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 may affect the following entities, some of which might be small entities: the owners of operators of vessels intending to transit or anchor in a portion of the Cuyahoga River near Cleveland, Ohio between 7 a.m. to 4 p.m. on September 15 and 16, 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 will be enforce for only 9 hours each day for two days. Although the safety zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the Captain of the Port. Before the enforcement of the zone, we will issue maritime advisories widely available to users of the river.

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 will 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0569 to read as follows:

§ 165.T09–0569 Safety Zone; Head of the Cuyahoga, U.S. Rowing Masters Head Race National Championship, and Cleveland Dragon Boat Festival, Cuyahoga River, Cleveland, OH.

(a) *Location.* The safety zone will encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn perpendicular from position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge, north to the Detroit-Superior Viaduct bridge.

(b) *Enforcement Period.* This regulation will be enforced on September 15 and 16, 2012 from 7 a.m. until 4 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 Buffalo 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 Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo 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 Buffalo, or his on-scene representative.

Dated: August 22, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–21921 Filed 9–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0736]

RIN 1625–AA00

Safety Zone: America's Cup World Series Regattas, San Francisco Bay; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule.

SUMMARY: The Coast Guard is establishing a safety zone for sailing regattas to be conducted on the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island. This rule will regulate the on-water activities associated with 2012 America's Cup World Series regattas scheduled for October 2–3, 2012. This safety zone is established to ensure the safety of mariners transiting the area from the dangers associated with the sailing events. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 12:30 p.m. on October 2, 2012 until 4:30 p.m. on October 3, 2012.

Comments and related material must be received by the Coast Guard on or before October 9, 2012.

Requests for public meetings must be received by the Coast Guard on or before September 26, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0736. 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 temporary rule, call or email Lieutenant DeCarol Davis, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

ACRM America's Cup Race Management
DHS Department of Homeland Security
FR Federal Register

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–2012–0736) 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–2012–0736) 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 rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Coast Guard is issuing this temporary interim 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 publishing an NPRM would be impracticable and contrary to the public interest. The Coast Guard received notification of the sailing events on July 19, 2012 and the event would occur before the rulemaking process would be completed. Because of the dangers posed by the high speeds of the sailing vessels used during the America's Cup event, the safety zone is necessary to provide for the safety of mariners transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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 reasons stated above, delaying the effective date would be impracticable and contrary to the public interest.

C. Basis and Purpose

The legal basis for the proposed temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C sections 1221 *et seq.*).

In 2012, the City of San Francisco plans to host two America's Cup World Series regattas as part of a circuit of sailing events being conducted at other U.S. and international venues. The first San Francisco World Series regattas are scheduled to occur August 21–26, 2012. The second World Series regattas are scheduled to occur October 2–7, 2012 and will be held in conjunction with the San Francisco Bay Fleetweek events as per an official agreement made between the America's Cup Race Management (ACRM) and the Fleetweek program coordinators. This rule will regulate the on-water activities for the America's Cup World Series regattas taking place in October immediately prior to Fleetweek.

From October 2–3, 2012, this rule establishes a temporary safety zone for the sailing events on the waters of San Francisco Bay adjacent to the City of San Francisco waterfront. From October 4–7, 2012, America's Cup sailing events will occur inside of the regulated area established in the existing Fleetweek special local regulation, which is described in 33 CFR 100.1105(b)(2). This rule does not apply to the America's Cup sailing that will occur during Fleetweek. This temporary safety zone is established to ensure the safety of mariners transiting the area from the dangers associated with the sailing events.

D. Discussion of the Interim Rule

During the first two days of the America's Cup World Series regattas taking place in October, the Coast Guard will enforce a temporary safety zone in the navigable waters of San Francisco Bay bounded by a line beginning at position 37°48′43″ N, 122°25′11″ W at the eastern end of Fisherman's Wharf Breakwater, running east to position 37°48′43″ N, 122°25′01″ W, running north to position 37°49′07″ N, 122°25′01″ W, running northwest to position 37°49′14″ N, 122°25′12″ W located south of Alcatraz Island, running west to position 37°49′14″ N, 122°27′13″ W, running south to position 37°48′23″ N, 122°27′13″ W, running eastward along the City of San Francisco shoreline, along the Municipal Pier, east across the mouth of Aquatic Park cove to the Fisherman's Wharf breakwater then east along the breakwater (NAD 83). The World Series regattas regulated by this temporary safety zone are scheduled to take place from 12:30 p.m. until 4:30 p.m. on October 2, 2012 and October 3, 2012. Movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront is not regulated by this rule. At the conclusion of the World Series regattas the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the America's Cup sailing events. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep mariners and vessels away from the immediate vicinity of the high-speed sailing vessels participating in America's Cup.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and 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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We do not expect the rule to be significant because the safety zone is limited in duration and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via 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**, 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

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). Specifically, this event was analyzed as part of the environmental assessment for the 34th America's Cup (available at *http://www.americascupnepa.org/documents.html,* see p. 2–101, covering the exhibition from September 30 to October 3). Based on our analysis, the Coast Guard has concluded this action does not individually or cumulatively have a significant effect on the human environment. A copy of the Finding of No Significant Impact for this event is available in the docket.

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

■ 2. Add § 165.T11–515 to read as follows:

§ 165.T11–515 Safety Zone: America's Cup World Series Regattas, San Francisco Bay; San Francisco, CA.

(a) *Location.* This temporary safety zone is established on the waters of San Francisco Bay located in the vicinity of the Golden Gate Bridge, Alcatraz Island, the City of San Francisco waterfront, and the Bay Bridge. Movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront is not regulated by this rule. The safety zone will encompass the navigable waters of the San Francisco Bay bounded by a line beginning at position 37°48′43″ N, 122°25′11″ W at the eastern end of Fisherman's Wharf Breakwater, running east to position 37°48′43″ N, 122°25′01″ W, running north to position 37°49′07″ N, 122°25′01″ W, running northwest to position 37°49′14″ N, 122°25′12″ W located south of Alcatraz Island, running west to position 37°49′14″ N, 122°27′13″ W, running south to position 37°48′23″ N, 122°27′13″ W, running eastward along the City of San Francisco shoreline, along the Municipal Pier, east across the mouth of Aquatic Park cove to the Fisherman's Wharf breakwater then east along the breakwater. All coordinates are North American Datum 1983.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 12:30 p.m. until 4:30 p.m. on October 2, 2012 and from 12:30 p.m. until 4:30 p.m. on October 3, 2012. The enforcement period may be curtailed earlier by the Captain of the Port (COTP). The COTP will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: August 17, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–21919 Filed 9–5–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–RCRA–2011–0524 [FRL–9703–1]

RIN 2050–AG71

Polychlorinated Biphenyls (PCBs): Revisions to Manifesting Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is issuing this direct final rule to update and clarify several sections of the Polychlorinated Biphenyl (PCB) regulations associated with the manifesting requirements, which uses the Resource Conservation and Recovery Act (RCRA) Uniform Hazardous Waste Manifest, under the Toxic Substances Control Act (TSCA).

Today's changes are to match, as much as possible, the manifesting requirements for PCBs under TSCA to the manifesting requirements for hazardous waste under RCRA, of which the regulatory changes to implement the Uniform Hazardous Waste Manifest form were promulgated on March 4, 2005.

DATES: This direct final rule will be effective December 5, 2012 without further notice, unless EPA receives adverse written comment by November 5, 2012. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0524, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov* and *noggle.william@epa.gov*. Attention Docket ID No. EPA–HQ–RCRA–2011–0524.
- *Fax:* 202–566–9744. Attention Docket ID No. EPA–HQ–RCRA–2011–0524.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2011–0524. Please include a total of 2 copies.
- *Hand Delivery:* Please deliver 2 copies to the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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–RCRA–2011–0524. 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 any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ-Docket Center, Docket ID No EPA–HQ–RCRA–2011–0524, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Noggle, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Avenue NW., Washington, DC 20460, Phone: 703–347–8769; or by email: *noggle.william@epa.gov*.

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I. Why is EPA using a direct final rule?

EPA is publishing this rule as a direct final rule because the Agency views this action as noncontroversial and EPA anticipates no adverse comments since these changes are only meant to update the PCB manifest regulations for the sake of consistency between the PCB manifest and the RCRA manifest. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is also publishing a separate document that will serve as a proposed rule should the Agency receive adverse comments on this action. EPA will not institute a second proposal or allow for another comment period on this action. Any parties interested in commenting must do so at this time using the Docket ID: EPA–HQ–RCRA–2011–0524, which is common to both this direct final rule and the proposed rule. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comments, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that these amendments will not take effect, and the reason for such withdrawal. EPA will address public comments in any subsequent final rule based on the proposed rule being concurrently published today.

If we do not receive adverse comments, this direct final rule will take effect on December 5, 2012.

II. Does this action apply to me?

This action applies to generators, transporters, and designated facilities (off-site disposal and commercial storage facilities) managing PCB wastes. Potentially affected categories and entities include, but are not necessarily limited to:

NAICS Description	NAICS Code	Examples of potentially affected entities
Electric Power Distribution	221122	Generators of PCB waste.
Transportation and Warehousing	48–49	Transportation of PCB waste.
Waste Management and Remediation Services	562	Facilities that manage PCB waste.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 Code of Federal Regulations (CFR) part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this document.

III. Description of Amendments to Part 761

A. Overview of Changes to 40 CFR Part 761

The existing PCB manifest regulations are in 40 CFR part 761. The RCRA manifest regulations are in 40 CFR parts 262, 263, and 264. Since the promulgation of the PCB manifest regulations, several updates have been made to the RCRA manifest regulations, where the corresponding changes have not been made to the PCB manifest regulations. The intent of today's changes is to bring into alignment, as much as possible, the manifesting requirements for PCBs to those of RCRA hazardous waste. These changes are needed because PCB wastes are manifested using the RCRA Uniform Hazardous Waste Manifest and PCB waste handlers and generators need to adhere to the more recent RCRA hazardous waste manifest regulations, while still accounting for certain unique PCB manifest regulations. Since PCBs are manifested using the same manifest as RCRA hazardous waste, all of the changes described today to part 761 are already being implemented by PCB waste handlers and generators except for the exemption to manifest waste transported on a right-of-way (40 CFR 262.20(f)), and as a result, this rulemaking should have no economic impact since PCB waste handlers and generators will not have to modify their current practices on manifesting PCB waste. No additional burden is created. Furthermore, to simplify the use of both the RCRA and PCB manifest regulations, sections under part 761 are being reorganized and renumbered to parallel the similar sections under parts 262 through 264.

EPA compared the PCB manifest regulations (40 CFR part 761) to the RCRA manifest regulations (40 CFR parts 262, 263, and 264) to determine which sections from the RCRA manifest regulations do not exist in the PCB manifest regulations. Below is a table (Table 1) of the regulations from 40 CFR parts 262–264 that EPA is adding to 40 CFR part 761, where the content of the section will be new to 40 CFR part 761. Explanations for the changes below, as with the other changes in this rule, are included in the subsequent sections in this direct final rule. In addition to today's direct final rule, EPA is including, in the docket, a crosswalk between the RCRA manifest regulations and the PCB manifest regulations.

TABLE 1

40 CFR section	Brief description of RCRA regulation
262.20(c)	Designating an alternate facility on the manifest.
262.20(f)	Manifesting exemption for the transport of waste on a public or private right-of-way within or along the border of contiguous property.
262.23(f)	Generator requirements for rejected shipments returned by the receiving facility back to the generator. (language on non-empty containers and residues is not relevant to PCB waste).
262.40(b)	3-year exception report retention requirement for generators.
263.21(a)(2)	Alternate designated facility is listed as one of the options that the transporter must deliver the waste to.
263.21(b)(2)	Partial and full load rejection requirements if the waste is rejected while the transporter is on the facility's premises.
264.71(a)(1)	Facility signs and dates the manifest when the waste was received, except as noted in the discrepancy space of the manifest, or when the waste was rejected as noted in the manifest discrepancy space.
264.72(a)(2)	Definition of rejected wastes as manifest discrepancies.
264.72(d)	Upon rejecting waste, the facility must consult with the generator prior to forwarding the waste to another facility. The facility must send the waste to another facility or back to the generator within 60 days of the rejection. While making arrangements for the rejected waste, the facility must ensure that the transporter retains custody or the facility provides secure, temporary custody of the waste.
264.72(e)	Facility requirements for preparing a new manifest for full or partial load rejections that are to be sent off-site to an alternate facility.
264.72(f)	Facility requirements for preparing a new manifest for rejected wastes that must be sent back to the generator.
264.72(g)	Facility requirements for amending the manifest for rejected wastes after the facility has signed, dated, and returned the manifest to the delivering transporter or to the generator.
264.76(a)(6)	Unmanifested waste report must include the certification signed by the owner, operator, or authorized representative of the facility.

B. Revisions to the PCB Regulations under 40 CFR 761.207 (The Manifest—General Requirements)

EPA is using the following table (Table 2) to compare the sections of the PCB regulations under 40 CFR 761.207 to the equivalent or relevant sections in the RCRA regulations in 40 CFR part 262, which are §§ 262.20, 262.21, and 262.22.

TABLE 2

CFR Part 761 Section	CFR Part 262 Section	Description	Match (Y/N)	New 761 CFR
761.207 The manifest—general requirements.	262.20 General requirements.			
761.207(a)	262.20(a)(1)	Generator requirements	Y	761.207(a).
761.207(a)(1)		PCB specific	N	761.207(a)(1).
761.207(a)(2)		PCB specific	N	761.207(a)(2).
761.207(a)(3)		PCB specific	N	761.207(a)(3).
	262.20(a)(2)		N	see description below.
761.207(b)	262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.	Supplies of printed copies of 8700–22.	N	761.208.
761.207(c)		State requirements	N	see description below.
761.207(d)		State requirements	N	see description below.
761.207(e)		State requirements	N	see description below.
761.207(f)		State requirements	N	see description below.
761.207(g)	262.20(b)	Generator requirements	Y	761.207(b).
	262.20(c)	Generator requirements	N	761.207(c).
761.207(h)	262.20(d)	Generator and Transporter requirements.	Y	761.207(d).
	262.20(e)	Generator requirements	N	see description below.
	262.20(f)	Generator and Transporter requirements.	N	761.207(f).
761.207(i)	262.22 Number of copies	Number of Copies	Y	761.209.
761.207(j)		PCB specific	N	761.207(e).

Listed below are the explanations of each change made to § 761.207 in the order listed on the table above.

40 CFR 761.207(a)—general manifest requirements for generators: Section 761.207(a) closely matches § 262.20(a)(1). However, § 262.20(a)(1) includes references to the manifest OMB control number and treatment, storage, or disposal facilities completing a manifest for a rejected load, which § 761.207(a) does not include. Section 262.20(a)(1) also includes a reference to the manifest continuation sheet being EPA form 8700–22A. Due to the additional manifest data required under §§ 761.207(a)(1), (2), and (3), EPA form 8700–22A is not required as the continuation sheet for the PCB manifest. The OMB control number for managing PCB manifesting requirements and RCRA manifesting requirements is currently different, so the OMB control number will not be cited in Section 761.207(a). Section 761.207(a), codified through this rule, utilizes the language from § 262.20(a)(1), except for the reference to form 8700–22A and the specific OMB control number reference. Additionally, to clarify the use of a continuation sheet for the PCB manifest, a note is included in § 761.207(a), which explicitly states form 8700–22A does not need to be used as the continuation sheet.

40 CFR 761.207(a)(1), (2), and (3)—general manifest requirements for generators: Sections 761.207(a)(1), (2), and (3) are unique requirements for completing a manifest for PCB waste, such as including the date for removal from service for disposal and the PCB article's serial number on the manifest. These sections will be retained in the updated regulations as §§ 761.207(a)(1), (2), and (3) with minor revisions.

40 CFR 262.20(a)(2)—compliance date: Part 761 does not contain a provision similar to § 262.20(a)(2). Section 262.20(a)(2) specifies the compliance date of manifest form revisions being September 5, 2006. This compliance date was relevant to PCB manifests; however, there should not be any more of the out-dated forms being used. Accordingly, language from § 262.20(a)(2) is not included in the updated PCB regulations. Section 262.20(a)(2) will be addressed in a separate RCRA rulemaking.

40 CFR 761.207(b)—obtaining manifests: Section 761.207(b) briefly describes how to obtain manifests. 40 CFR 262.21(g) not only includes a brief description in § 761.207(b), but also includes the most current details on obtaining manifests. Because § 761.207(b) lacks these details, § 761.208, codified through this rule, uses language from § 262.21(g). The language regarding certification of manifest printers from the remainder of § 262.21 will not be included in § 761.208, because EPA does not intend to certify printers solely for PCB manifests, when a certification process already exists under the RCRA regulation and certified printers distribute the same manifest form for both PCB and RCRA waste.

40 CFR 761.207(c), (d), (e), and (f)—State specific manifest requirements for generators: Sections 761.207(c), (d), (e), and (f) are requirements for State specific manifests, which are no longer applicable to either the PCB or RCRA manifest requirements, because, under the revised RCRA manifest regulations promulgated on March 4, 2005 (70 FR 10815), all of the States must use the same uniform manifest for both PCB waste and RCRA hazardous waste (EPA form 8700–22). Sections 761.207(c), (d), (e), and (f) are obsolete and will be deleted from the CFR.

40 CFR 761.207(g) and (h)—general manifest requirements for generators and transporters: The intent of the language in §§ 761.207(g) and (h) matches that of §§ 262.20(b) and (d), respectively. To harmonize the regulatory sections, the § 761.207(b) and

(d), codified through this rule, will contain the language from §§ 262.20(b) and (d), and §§ 761.207(g) and (h) will be removed from the CFR.

40 CFR 262.20(c)—designating an alternate facility: Section 262.20(c) contains the details for designating an alternate facility on the manifest. This information is relevant to completing a manifest for PCB waste; however, this information does not currently exist under part 761. Section 761.207(c), codified through this rule, will contain the language from § 262.20(c).

40 CFR 262.20(e)—requirements for hazardous waste generators of between 100kg and 1000kg in a calendar month: Part 761 does not contain a similar provision to § 262.20(e). Section 262.20(e) contains exceptions for generators of hazardous waste between 100kg and 1000kg in a calendar month, which is unique to the RCRA hazardous waste regulations. There is no such exception or distinction of PCB generators based on quantity in the PCB regulations. Language from § 262.20(e) will not be incorporated in § 761.207(e), codified through this rule.

40 CFR 262.20(f)—exceptions for public or private right-of-way: Part 761 does not contain a provision similar to § 262.20(f). Section 262.20(f) contains manifesting exceptions when transporting hazardous wastes on a public or private right-of-way within or along the border of contiguous property (codified under 62 FR 6651, Feb. 12, 1997). EPA believes this manifesting exception is relevant to PCB waste. The citations in § 262.20(f) to § 263.30 and § 263.31 show that a cleanup on a private or public right-of-way is necessary despite the manifesting exemption. The cleanup and disposal of a PCB waste resulting from a spill is covered under part 761 Subparts D and G. The regulation here merely exempts the manifesting requirements, which are separate from Subparts D and G, thus the language regarding a discharge of the waste is redundant and not included in the updated § 761.207(f). Section 262.20(f) cites the marking regulations in § 262.32(b) which are substantially different than the PCB marking regulations, so that portion of § 262.20(f) will also not be included in the updated PCB regulations.

40 CFR 761.207(i)—number of copies: The intent of the language in § 761.207(i) matches that of § 262.22. Both sections describe the required number of copies of the manifest, but § 262.22 contains more streamlined language. Section 262.22 does not specify that the copy be returned to the generator 'by the owner or operator of the first designated commercial storage or disposal facility'; however, this language is included in this rulemaking under new § 761.213(a)(2)(iv), codified through this rule. The updated § 761.209, also codified through this rule, will contain language from § 262.22, and § 761.207(i) will be removed from the CFR.

40 CFR 761.207(j)—general manifest requirements for PCB waste: Section 761.207(j) contains unique requirements for completing a manifest for PCB waste, such as what type of PCB waste requires a manifest. This section will be retained in the updated regulations and will be re-numbered as § 761.207(e).

C. Revisions to the PCB Regulations Under 40 CFR 761.208 (Use of the Manifest)

EPA is using the following table (Table 3) to compare the PCB regulations under § 761.208 to the equivalent or relevant sections in the RCRA regulations in 40 CFR parts 262, 263, and 264, which are §§ 262.23, 263.20, 263.21, and 264.71.

TABLE 3

CFR Part 761 Section	CFR Parts 262–264 Section	Description	Match (Y/N)	New 761 CFR
761.208 Use of the manifest.	262.23 Use of the manifest..			
761.208(a)(1)	262.23(a)	Generator requirements	Y	761.210(a).
761.208(a)(1)(i)	262.23(a)(1)	Generator requirements	Y	761.210(a)(1).
761.208(a)(1)(ii)	262.23(a)(2)	Generator requirements	Y	761.210(a)(2).
761.208(a)(1)(iii)	262.23(a)(3)	Generator requirements	Y	761.210(a)(3).
761.208(a)(1)(iv)	262.23(b)	Generator requirements	Y	761.210(b).
761.208(a)(2)	262.23(c)	Generator requirements	Y	761.210(c).
761.208(a)(3)	262.23(d)	Generator requirements	Y	761.210(d).
761.208(a)(3)(i)	262.23(d)(1)	Generator requirements	Y	761.210(d)(1).
761.208(a)(3)(ii)	262.23(d)(2)	Generator requirements	Y	761.210(d)(2).
	262.23(d)(3)	Generator requirements	N	see description below.
	262.23(e)	Generator requirements	N	see description below.
	262.23(f)	Generator requirements	N	761.210(e).
761.208(a)(4)		Generator requirements	N	see description below.
	263.20 The manifest system..			
761.208(b)(1)	263.20(a)(1)		Y	761.211(a)(1).
761.208(b)(1)(i)		Exception for manifesting if PCB waste is below 50 ppm.	N	761.211(a)(1)(i).
761.208(b)(1)(ii)		Exception for manifesting if transporter is taken to a designated facility that is owned by the generator.	N	761.211(a)(1)(ii).
	263.20(a)(2)	Transporter requirements	N	see description below.
	263.20(a)(3)	Transporter requirements	N	see description below.
761.208(b)(2)	263.20(b)	Transporter requirements	Y	761.211(b).
761.208(b)(3)	263.20(c)	Transporter requirements	N	761.211(c).
761.208(b)(4)	263.20(d)	Transporter requirements	Y	761.211(d).
761.208(b)(4)(i)	263.20(d)(1)	Transporter requirements	Y	761.211(d)(1).
761.208(b)(4)(ii)	263.20(d)(2)	Transporter requirements	Y	761.211(d)(2).
761.208(b)(4)(iii)	263.20(d)(3)	Transporter requirements	Y	761.211(d)(3).
761.208(b)(5)	263.20(e)	Transporter requirements	Y	761.211(e).
761.208(b)(5)(i)	263.20(e)(1)	Transporter requirements	Y	761.211(e)(1).
761.208(b)(5)(ii)	263.20(e)(2)	Transporter requirements	N	761.211(e)(2).
761.208(b)(5)(iii)	263.20(e)(3)	Transporter requirements	Y	761.211(e)(3).

TABLE 3—Continued

CFR Part 761 Section	CFR Parts 262–264 Section	Description	Match (Y/N)	New 761 CFR
761.208(b)(5)(iv)	263.20(e)(4)	Transporter requirements	Y	761.211(e)(4).
761.208(b)(5)(v)	263.20(e)(5)	Transporter requirements	Y	761.211(e)(5).
761.208(b)(6)	263.20(f)	Transporter requirements	Y	761.211(f).
	263.20(g)	Transporter requirements	N	see description below.
	263.20(h)	Transporter requirements	N	see description below.
	263.21 Compliance with the manifest.			
761.208(b)(7)	263.21(a)	Transporter requirements	Y	761.212(a).
761.208(b)(7)(i)	263.21(a)(1)	Transporter requirements	Y	761.212(a)(1).
	263.21(a)(2)	Transporter requirements	N	761.212(a)(2).
761.208(b)(7)(ii)	263.21(a)(3)	Transporter requirements	Y	761.212(a)(3).
	263.21(a)(4)	Transporter requirements	N	see description below.
761.208(b)(8)	263.21(b)(1)	Transporter requirements	Y	761.212(b)(1).
	263.21(b)(2)	Transporter requirements	N	761.212(b)(2).
	263.21(b)(2)(i)	Transporter requirements	N	761.212(b)(2)(i).
	263.21(b)(2)(ii)	Transporter requirements	N	761.212(b)(2)(ii).
761.208(b)(9)		DOT 49 CFR part 171	N	761.212(b)(2)(iii).
	264.70 Applicability.			
	264.70(a)	Designated facility requirements.	N	see description below.
	264.70(b)		N	see description below.
	264.71 Use of manifest system..			
	264.71(a)(1)	Designated facility requirements.	N	761.213(a)(1).
761.208(c)(1)	264.71(a)(2)	Designated facility requirements.	Y	761.213(a)(2).
761.208(c)(1)(i)	264.71(a)(2)(i)	Designated facility requirements.	Y	761.213(a)(2)(i).
761.208(c)(1)(ii)	264.71(a)(2)(ii)	Designated facility requirements.	Y	761.213(a)(2)(ii).
761.208(c)(1)(iii)	264.71(a)(2)(iii)	Designated facility requirements.	Y	761.213(a)(2)(iii).
761.208(c)(1)(iv)	264.71(a)(2)(iv)	Designated facility requirements.	Y	761.213(a)(2)(iv).
761.208(c)(1)(v)	264.71(a)(2)(v)	Designated facility requirements.	Y	761.213(a)(2)(v).
	264.71(a)(3)	Designated facility requirements.	N	see description below.
761.208(c)(2)	264.71(b)	Designated facility requirements.	Y	761.213(b).
761.208(c)(2)(i)	264.71(b)(1)	Designated facility requirements.	Y	761.213(b)(1).
761.208(c)(2)(ii)	264.71(b)(2)	Designated facility requirements.	Y	761.213(b)(2).
761.208(c)(2)(iii)	264.71(b)(3)	Designated facility requirements.	Y	761.213(b)(3).
761.208(c)(2)(iv)	264.71(b)(4)	Designated facility requirements.	Y	761.213(b)(4).
761.208(c)(2)(v)	264.71(b)(5)	Designated facility requirements.	Y	761.213(b)(5).
761.208(c)(3)	264.71(c)	Designated facility requirements.	N	761.213(c).
	264.71(d)	Designated facility requirements.	N	see description below.
	264.71(e)	Designated facility requirements.	N	see description below.

Listed below are the explanations for each change made to § 761.208 in the table above.

40 CFR 761.208(a)(1), (a)(2), and (a)(3)—generator requirements for completing a manifest: The intent of the language in §§ 761.208(a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2), (a)(3), (a)(3)(i), and (a)(3)(ii) matches that of §§ 262.23(a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), and (d)(2), respectively. All sections describe a portion of the generator requirements for completing a manifest. A portion of § 262.23(c) contains the requirements for exporting bulk shipments of waste by water. This information could be relevant to completing a manifest for PCB waste; however, because PCB waste has unique import and export restrictions found in part 761 subpart F, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking. Sections 761.208(a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2), (a)(3), (a)(3)(i), and (a)(3)(ii) will be re-written to include language from §§ 262.23(a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), and (d)(2), and § 761.208(a)

and will be renumbered under § 761.210.

40 CFR 262.23(d)(3)—exporting waste by rail: Part 761 does not contain a similar provision to § 262.23(d)(3). Section 262.23(d)(3) contains the requirements for exporting waste by rail. This information could be relevant to completing a manifest for PCB waste; however, for the reasons described in the paragraph above, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking.

40 CFR 262.23(e)—States not yet authorized to regulate a specific hazardous waste: Part 761 does not contain a similar provision to § 262.23(e). Section 262.23(e) contains regulations regarding shipments of hazardous waste to States which have not yet obtained authorization to regulate that particular waste. Due to PCBs being regulated under TSCA at the Federal level, § 262.23(e) is not relevant to manifesting PCBs. Section 262.23(e) will not be referenced in the PCB regulations.

40 CFR 262.23(f)—rejected shipments: Part 761 does not contain a provision similar to § 262.23(f), even though the substance of § 262.23(f) is relevant to rejected loads of PCB waste with the exception of the reference to § 265.72(f). Section 262.23(f) describes generator requirements for rejected shipments of hazardous waste that are returned to the generator by the designated facility (following the procedures of §§ 264.72(f) or 265.72(f)). Section 761.210(e), codified through this rule, includes language from § 262.23(f) and all the sections under § 262.23(f), except for language on residues. The empty container residue language from RCRA is not relevant to PCB waste, because there is no equivalent section under the PCB regulations for § 261.7 *Residues of hazardous waste in empty containers* (*i.e.* PCB residues are regulated differently than residues of RCRA hazardous waste). PCB residues will not be addressed in this action.

40 CFR 761.208(a)(4)—exception reporting: The language in § 761.208(a)(4) closely matches that of §§ 262.42(a)(1) and (a)(2). All three sections describe a portion of the exception reporting requirements for a manifest. Sections 262.42(a)(1) and (a)(2) are specifically for generators of greater than 1000 kg of hazardous waste in a calendar month. There is no such quantity distinction for PCB generators in part 761. Also, § 761.208(a)(4) contains a requirement for the generator to retain a written record of all telephone or other confirmations to be included in the annual document log, in accordance with § 761.180, specifically § 761.180(a)(2)(viii). EPA believes this requirement is no longer necessary to effectively monitor compliance for exception reporting. The language from § 761.208(a)(4) will not be retained in the updated PCB regulations. Section 761.208(a)(4) will be removed from the CFR. Section 761.180(a)(2)(viii) will be removed from the CFR as well.

40 CFR 761.208(b)(1)—generator manifest requirements for transporters: The language in § 761.208(b)(1) closely matches that of § 263.20(a)(1). However, the exceptions listed in §§ 761.208(b)(1)(i) and (ii) are PCB-specific manifest requirements, so §§ 761.208(b)(1), (b)(1)(i) and (b)(1)(ii) will be retained and renumbered as §§ 761.211(a), (a)(1)(i), and (a)(1)(ii).

40 CFR 263.20(a)(2)—EPA Acknowledgement of Consent is required for exports: Part 761 does not contain a provision similar to § 263.20(a)(2). Section 263.20(a)(2) contains requirements for both exports of wastes that are subject to Subpart H of 40 CFR part 262 and exports of wastes that are not. Even though some of the content found under § 263.20(a)(2) may be relevant to exports of PCB waste, specific requirements for imports and exports of PCBs for disposal will not be addressed in this rule, because PCB waste has unique import and export restrictions found in part 761 subpart F.

40 CFR 263.20(a)(3)—compliance date: Part 761 does not contain a provision similar to § 263.20(a)(3). Section 263.20(a)(3) specifies the compliance date of Uniform Hazardous Waste Manifest form revisions being September 5, 2006. This compliance date was relevant to PCB manifests; however, there should not be any more of the out-dated forms being used. Accordingly, language from § 263.20(a)(3) is not included in the PCB regulations. Section 263.20(a)(3) will be addressed in a separate RCRA rulemaking.

40 CFR 761.208(b)(2), (b)(4), and (b)(5)—transporter requirements for completing a manifest: The intent of the language in §§ 761.208(b)(2), (b)(4), (b)(4)(i), (b)(4)(ii), (b)(4)(iii), (b)(5), (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), and (b)(5)(v) matches that of §§ 263.20(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5). All sections detail a portion of the transporter requirements for completing a manifest. Sections 761.211(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5), codifed through this rule, will contain language from §§ 263.20(b), (d), (d)(1), (d)(2), (d)(3), (e), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5). Sections 761.208(b)(2), (b)(4), (b)(4)(i), (b)(4)(ii), (b)(4)(iii), (b)(5), (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), and (b)(5)(v) will be removed from the CFR.

40 CFR 263.20(c)—accompanying EPA Acknowledgment of Consent: Section 761.208(b)(3) is similar to § 263.20(c). However, § 263.20(c) includes a requirement for an export of waste to have an accompanying EPA Acknowledgment of Consent. Manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking, as PCB waste has unique import and export restrictions found in part 761 subpart F. Therefore, the language from § 263.20(c) will not be included in the PCB regulations. Instead, the language from § 761.208(b)(3) will be retained and renumbered as § 761.211(c), and § 761.208(b)(3) will be removed from the CFR.

40 CFR 263.20(e)(2)—accompanying EPA Acknowledgment of Consent: Section 761.208(b)(5)(ii) is similar to § 263.20(e)(2). However, § 263.20(e)(2) includes a requirement for an export of waste to have an accompanying EPA Acknowledgment of Consent. Since manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons described above, the language from § 263.20(e)(2) will not be included in § 761.211(e)(2). Instead, the language from § 761.208(b)(5)(ii) will be retained and renumbered as § 761.211(e)(2), and § 761.208(b)(5)(ii) will be removed from the CFR.

40 CFR 761.208(b)(6)—shipments involving rail transportation: The intent of the language in § 761.208(b)(6) matches that of § 263.20(f). In fact, § 761.208(b)(6) already references § 263.20(f). Section 761.211(f) and sections under § 761.211(f), codified through this rule, will contain language from § 263.20(f) and all the sections under § 263.20(f). However, § 263.20(f)(1)(iii)(c) and § 263.20(f)(2) both reference exports which will not be addressed in this rulemaking. Thus, § 263.20(f)(1)(iii)(c) and the portion of § 263.20(f)(2) referencing the RCRA Acknowledgement of Consent will not be included in the regulations. Section 761.208(b)(6) will be removed from the CFR.

40 CFR 263.20(g)—transporting waste out of the United States: Part 761 does not contain a provision similar to § 263.20(g), even though the content of § 263.20(g) could be relevant to completing a manifest for PCB waste. Section 263.20(g) contains requirements for transporting waste out of the United States. Specific manifest requirements for imports and exports of PCBs for

disposal will not be addressed in this rulemaking because PCB waste has unique import and export restrictions found in part 761 subpart F.

40 CFR 263.20(h)—transporter requirements when transporting waste from a generator of between 100kg and 1000kg of hazardous waste in a calendar month: Part 761 does not contain a provision similar to § 263.20(h). Section 263.20(h) contains exceptions for generators of hazardous waste between 100kg and 1000kg in a calendar month. There is no such exception or distinction of PCB generators based on quantity in part 761. Therefore, language from § 263.20(h) will not be included in the PCB regulations.

40 CFR 761.208(b)(7)—transporter delivering to designated facility or next transporter: The intent of the language in §§ 761.208(b)(7), (b)(7)(i), and (b)(7)(ii) matches that of §§ 263.21(a), (a)(1), and (a)(3). All sections contain a portion of the transporter requirements for completing a manifest. Sections 761.212(a), (a)(1), and (a)(3), codified through this rule, will contain language from §§ 263.21(a), (a)(1), and (a)(3) to maintain consistency with the RCRA regulations. Section 761.208(b)(7) will be removed from the CFR.

40 CFR 263.21(a)(2)—alternate designated facility: Section 263.21(a)(2) contains the requirement for delivering waste to an alternate facility if the waste cannot be delivered to the designated facility. Even though the substance of § 263.21(a)(2) is relevant to delivery of PCB waste, part 761 does not currently have a provision similar to § 263.21(a)(2). Section 761.212(a)(2), codified through this rule, will contain language from § 263.21(a)(2).

40 CFR 263.21(a)(4)—delivering waste to a place outside the United States: Part 761 does not contain a provision similar to § 263.21(a)(4). Section 263.21(a)(4) contains the requirement for delivering waste to a place outside the United States. Even though the content of § 263.21(a)(4) could be relevant to completing a manifest for PCB waste, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons previously described.

40 CFR 761.208(b)(8)—what to do when waste cannot be delivered: The intent of the language in § 761.208(b)(8) matches that of § 263.21(b)(1). Both sections contain the transporter requirements when waste cannot be delivered. Section 761.212(b)(1), codified through this rule, will contain language from § 263.21(b)(1) to maintain consistency with the RCRA regulations. Section 761.208(b)(8) will be removed from the CFR.

40 CFR 263.21(b)(2)—partial and full load rejections: Section 263.21(b)(2) contains the requirement for partial load and full load rejections of waste. Even though the substance of § 263.21(b)(2) is relevant to rejected loads of PCB waste, part 761 does not currently have a provision similar to § 263.21(b)(2). Sections 761.212(b)(2), (b)(2)(i), and (b)(2)(ii), codified through this rule, will contain language from §§ 263.21(b)(2), (b)(2)(i), and (b)(2)(ii).

40 CFR 264.70(a)—applicability of manifest regulations to RCRA regulated entities: Part 761 does not contain a provision similar to § 264.70(a). Section 264.70(a) is specific to the RCRA regulations, and thus will not be included in the regulatory changes.

40 CFR 264.70(b)—compliance date: Part 761 does not contain a provision similar to § 264.70(b). Section 264.70(b) specifies the compliance date of manifest form revisions being September 5, 2006. This compliance date was relevant to PCB manifests; however, there should not be any more of the out-dated forms being used. Accordingly language from § 264.70(b) is not included in the PCB regulations. Section 264.70(b) will be addressed in a separate RCRA rulemaking.

40 CFR 761.208(b)(9)—DOT regulations: Section 761.208(b)(9) emphasizes the significance of transporter regulations issued by the Department of Transportation (DOT) and set forth at 49 CFR part 171. Even though the same requirement is in place for transporters of RCRA hazardous waste, there is not an appropriate section under 40 CFR parts 262, 263, and 264 to reference. Accordingly, § 761.208(b)(9) will be retained, but renumbered to § 761.212(b)(2)(iii).

40 CFR 264.71(a)(1)—receiving facility requirements for completing a manifest: Section 264.71(a)(1) contains requirements for the receiving facility signing the manifest. Even though the substance of § 264.71(a)(1) is relevant to receiving PCB waste, part 761 does not currently have a provision similar to § 264.71(a)(1). Section 761.213(a)(1), codified through this rule, will contain language from § 264.71(a)(1).

40 CFR 761.208(c)(1)—receiving facility requirements for completing a manifest: The intent of the language in section § 761.208(c)(1) and its various subsections matches that of § 264.71(a)(2) and its various subsections. All sections contain the facility requirements when waste is delivered. However, § 761.208(c)(1) specifies the requirement for an off-site shipment, which is unique to the PCB regulations, and § 264.71(a)(2) does not include a similar provision. Section 761.208(c)(1) will be retained and renumbered to § 761.213(a)(2). The subsections under new § 761.213(a)(2) will contain language from the subsections under § 264.71(a)(2). Subsections under § 761.208(c)(1) will be removed from the CFR.

40 CFR 264.71(a)(3)—receiving waste from outside the United States: Part 761 does not have a provision similar to § 264.71(a)(3). Section 264.71(a)(3) contains the requirement for receiving waste from outside the United States. Even though the content of § 264.71(a)(3) could be relevant to PCB waste, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons previously described.

40 CFR 761.208(c)(2)—receiving facility requirements when waste is shipped by rail or water: The intent of the language in § 761.208(c)(2) and its various subsections matches that of § 264.71(b) and its various subsections. All sections contain the facility requirements when waste is delivered via rail or water. Section 761.213(b) and its various subsections, codified through this rule, will contain language from § 264.71(b). Section 761.208(c)(2) will be removed from the CFR.

40 CFR 761.208(c)(3)—waste initiated from a disposal facility: The intent of the language in § 761.208(c)(3) matches that of § 264.71(c). However, § 761.208(c)(3) specifies the requirement for an off-site shipment, which is unique to the PCB regulations, and § 264.71(c) does not include a similar provision. Section 761.208(c)(3) will be retained and renumbered to 761.213(c).

40 CFR 264.71(d)—tracking document for wastes under 40 CFR 262 Subpart H: Part 761 does not contain a provision similar to § 264.71(d). Section 264.71(d) contains instructions for shipments subject to 40 CFR 262 Subpart H, which deals with transboundary shipments of hazardous waste for recovery within the Organization for Economic Co-operation and Development (OECD). Regardless of whether the content of § 264.71(d) could be relevant for PCB waste, specific requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking, because PCB waste has unique import and export restrictions found in part 761 subpart F. Language from § 264.71(d) will therefore not be included in the PCB regulations.

40 CFR 264.71(e)—additional wastes regulated by the consignment state: Part 761 does not contain a provision similar to § 264.71(e). Section 264.71(e) contains instructions for how to handle

additional wastes regulated as hazardous wastes by the consignment state under its RCRA authorized state program. PCBs are regulated federally under TSCA authority, so § 264.71(e) does not apply. Language from § 264.71(e) will therefore not be included in the PCB regulations.

D. Revisions to the PCB Regulations under 40 CFR 761.209 (Retention of Manifest Records)

EPA used the following table (Table 4) to compare the sections of the PCB regulations under 40 CFR 761.209 to the equivalent or relevant sections in the RCRA regulations in 40 CFR parts 262, 263, and 264, which are §§ 262.40, 263.22, and 264.71.

TABLE 4

CFR Part 761 Section	CFR Parts 262–264 Section	Description	Match (Y/N)	New 761 CFR
761.209 Retention of manifest records.	263.22 Recordkeeping.			
761.209(a)	262.40(a)	Retention requirements	N	761.214(a)(1).
761.209(b)(1)	263.22(a)	Retention requirements	Y	761.214(a)(2).
761.209(b)(2)	263.22(b)	Retention requirements	Y	761.214(b).
761.209(b)(3)	263.22(c)	Retention requirements	Y	761.214(c).
761.209(b)(3)(i)	263.22(c)(1)	Retention requirements	Y	761.214(c)(1).
761.209(b)(3)(ii)	263.22(c)(2)	Retention requirements	Y	761.214(c)(2).
	263.22(d)	3 year retention requirement	N	see description below.
761.209(c)	264.71(a)(2)(v), 264.71(b)(v)	3 year retention requirement	Y	761.213(a)(2)(v), 761.213(b)(5).
	262.40(b)	3 year retention requirement	N	761.214(d).
761.209(d)	263.22(e)	Retention requirements	Y	761.214(e).

Listed below are the explanations of each change made to § 761.209 in the table above.

40 CFR 761.209(a)—retention requirements for generators: The language in § 761.209(a) closely matches that of § 262.40(a). Both sections contain manifest retention requirements for generators, but the language in § 262.40(a) is more streamlined. However, Section 761.209(a) references retention requirements in 761.180(a), which states that annual records, including manifests, must be maintained for three years after the facility ceases using or storing PCBs and PCB Items. Section 761.214(a)(1), codified through this rule, will contain language from § 262.40(a), as well as a reference to Section 761.180. Section 761.209(a) will be removed from the CFR.

40 CFR 761.209(b)(1), (b)(2), and (b)(3)—retention requirements for transporters: The intent of the language in §§ 761.209(b)(1), (b)(2), (b)(3), (b)(3)(i), and (b)(3)(ii) matches that of §§ 263.22(a), (b), (c), (c)(1), and (c)(2). All sections contain manifest retention requirements for transporters. Sections 761.214(a)(2), (b), (c), (c)(1), and (c)(2), codified through this rule, will contain the language from §§ 263.22(a), (b), (c), (c)(1), and (c)(2) to maintain consistency with the RCRA regulations. Sections 761.209(b)(1), (b)(2), (b)(3), (b)(3)(i), and (b)(3)(ii) will be removed from the CFR.

40 CFR 263.22(d)—retention requirements for transporters who transport out of the United States: Part 761 does not have a provision similar to § 263.22(d). Section 263.22(d) contains retention requirements for transporters who transport waste out of the United States. Even though the content of § 263.22(d) could be relevant to completing a manifest for PCB waste, specific manifest requirements for imports and exports of PCBs for disposal will not be addressed in this rulemaking for the reasons previously described.

40 CFR 761.209(c)—retention requirements for receiving facilities: The intent of the language in § 761.209(c) matches that of §§ 264.71(a)(2)(v) and 264.71(b)(5). All sections contain manifest retention requirements for facilities. As explained with respect to sections 761.208(c)(1)(v) and (c)(2)(v), new §§ 761.213(a)(2)(v) and (b)(5) will contain language from §§ 264.71(a)(2)(v) and 264.71(b)(5) to maintain consistency with the RCRA regulations. Section 761.209(c) will be removed from the CFR.

40 CFR 262.40(b)—exception report retention requirement for generators: Part 761 does not have a provision similar to § 262.40(b). Section 262.40(b) contains the 3-year exception report retention requirement for generators. The content of § 262.40(b) pertaining to the exception report is relevant to PCB exception reports. Thus, § 761.214(d), codified through this rule, will contain language from § 262.40(b).

40 CFR 761.209(d)—retention period for enforcement actions: The intent of the language in § 761.209(d) matches that of § 263.22(e). Both sections refer to extending the retention period for enforcement actions. Section 761.214(e), codified through this rule, will contain language from § 263.22(e) to maintain consistency with the RCRA regulations. Section 761.209(d) will be removed from the CFR.

E. Revisions to the PCB Regulations Under 40 CFR 761.210 (Manifest Discrepancies)

EPA used the following table (Table 5) to compare the PCB regulations under § 761.210 to the equivalent or relevant section in the RCRA regulations in 40 CFR part 264, which is § 264.72.

TABLE 5

CFR Part 761 Section	CFR Part 264 Section	Description	Match (Y/N)	New 761 CFR
761.210 Manifest discrepancies.	264.72 Manifest discrepancies.			
761.210(a)	264.72(a)	Manifest discrepancies	Y	761.215(a).
761.210(a)(1)	264.72(a)(1)	Manifest discrepancies	Y	761.215(a)(1).
	264.72(a)(2)	Manifest discrepancies	N	761.215(a)(2).

TABLE 5—Continued

CFR Part 761 Section	CFR Part 264 Section	Description	Match (Y/N)	New 761 CFR
	264.72(a)(3)	Manifest discrepancies	N	see description below.
761.210(a)(1)(i)	264.72(b)	Manifest discrepancies	Y	761.215(a) and 761.215(a)(1).
761.210(a)(1)(ii)	264.72(b)	Manifest discrepancies	Y	761.215(a) and 761.215(a)(1).
761.210(a)(2)	264.72(b)	Manifest discrepancies	Y	761.215(b).
761.210(b)	264.72(c)	Manifest discrepancies	Y	761.215(c).
	264.72(d)(1)	Manifest discrepancies	N	761.215(d)(1).
	264.72(d)(2)	Manifest discrepancies	N	761.215(d)(2).
	264.72(e)	Manifest discrepancies	N	761.215(e).
	264.72(f)	Manifest discrepancies	N	761.215(f).
	264.72(g)	Manifest discrepancies	N	761.215(g).

Listed below are the explanations of each change made to § 761.210 in the table above.

40 CFR 761.210(a), (a)(1), and (a)(2)—definition of manifest discrepancies and significant discrepancies: The intent of the language in §§ 761.210(a), (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(2) matches §§ 264.72(a), (a)(1), and (b). Also, section 761.210(a)(2) matches the second sentence in § 264.72(b). All sections contain the definition of significant discrepancies. Sections 761.215(a), (a)(1), and (b), codified through this rule, will contain language from §§ 264.72(a), (a)(1), and (b) to maintain consistency with the RCRA regulations, as well as language from §§ 761.210(a)(1)(i), (a)(1)(ii), and (a)(2) for the specific PCB examples used to illustrate significant discrepancies. Sections 761.210(a), (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(2) will be removed from the CFR.

40 CFR 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g)—manifest discrepancies for rejected loads: Sections 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g) contain information on manifest discrepancies for rejected loads. Even though the substance of §§ 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g) is relevant to PCB waste, part 761 does not currently have provisions similar to §§ 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g). Sections 761.215(a)(2), (d)(1), (d)(2), (e), (f), and (g), codified through this rule, will contain language from §§ 264.72(a)(2), (d)(1), (d)(2), (e), (f), and (g). However, the residue language from §§ 264.72 (d)(1), (d)(2), (e), (f), and (g) is not relevant to PCB waste as container residues do not have quantity limits for PCB wastes and will not be addressed in this action.

40 CFR 264.72(a)(3)—manifest discrepancies for residues: Part 761 does not contain a provision similar to § 264.72(a)(3). Section 264.72(a)(3) is not relevant to PCBs. Container residues do not have quantity limits for PCB waste. Thus, this will not be addressed in this action.

40 CFR 761.210(b)—resolving manifest discrepancies: The intent of the language in § 761.210(b) matches that of § 264.72(c). Both sections refer to resolving manifest discrepancies. Section 761.215(c), codified through this rule, will contain language from § 264.72(c) to maintain consistency with the RCRA regulations. Section 761.210(b) will be removed from the CFR.

F. Revisions to the PCB Regulations Under 40 CFR 761.211 (Unmanifested Waste Report)

EPA used the following table (Table 6) to compare the PCB regulations under § 761.211 to the equivalent or relevant section in the RCRA regulations in 40 CFR part 264, which is § 264.76.

TABLE 6

CFR Part 761 Section	CFR Part 264 Section	Description	Match (Y/N)	New 761 CFR
761.211 Unmanifested waste report.	264.76 Unmanifested waste report.			
761.211(a)	264.76(a)	Unmanifested Waste Report	N	761.216(a).
761.211(b)	264.76(a)	Unmanifested Waste Report	N	761.216(a).
761.211(c)	264.76(a)	Unmanifested Waste Report	N	761.216(a).
761.211(c)(1)	264.76(a)(1)	Unmanifested Waste Report	Y	761.216(a)(1).
761.211(c)(2)	264.76(a)(2)	Unmanifested Waste Report	Y	761.216(a)(2).
761.211(c)(3)	264.76(a)(3)	Unmanifested Waste Report	Y	761.216(a)(3).
761.211(c)(4)	264.76(a)(4)	Unmanifested Waste Report	Y	761.216(a)(4).
	264.76(a)(5)	Unmanifested Waste Report	Y	761.216(a)(5).
	264.76(a)(6)	Unmanifested Waste Report	N	761.216(a)(6).
761.211(c)(5)	264.76(a)(7)	Unmanifested Waste Report	Y	761.216(a)(7).
761.211(c)(6)		Unmanifested Waste Report	N	761.216(a)(8).
761.211(c)(6)(i)		Unmanifested Waste Report	N	761.216(a)(8)(i).
761.211(c)(6)(ii)		Unmanifested Waste Report	N	761.216(a)(8)(ii).

Listed below are the explanations of each change made to § 761.211 in the table above.

40 CFR 761.211(a)—facilities receiving unmanifested waste: The portion of § 761.211(a) that is similar to part of § 264.76(a) is that regarding the general instructions on how a facility handles unmanifested waste. These general instructions are still relevant to the PCB manifest regulations and will be retained in section 761.216(a), codified through this rule. The remaining portion of § 761.211(a) that is not covered in § 264.76(a) is the portion instructing the commercial storage or disposal facility to contact the generator to obtain a manifest or return the waste.

Even though EPA believes this is an industry practice that does not need to be explicitly stated, this language was retained to help clarify that the commercial storage or disposal facility should attempt to obtain a manifest from the generator before seeking instruction from the EPA Regional Administrator of the EPA region in which his facility is located. The remaining language from § 761.211(a) will be retained in § 761.216(a). Section 761.211(a) will be removed from the CFR. Please note that § 761.211(a), (b), and (c) are all being revised and renumbered to § 761.216(a).

40 CFR 761.211(b)—facilities receiving unmanifested waste: Section 761.211(b) contains instructions for the disposal facility to contact the EPA Regional Administrator for guidance when the generator of an unmanifested shipment cannot be contacted. This step is unique to the PCB manifest regulations and, at this time, is still relevant to those regulations. Thus, language from § 761.211(b) is retained and included in § 761.216(a), which is codified through this rule. Section 761.211(b) will be removed from the CFR. Please note that § 761.211(a), (b), and (c) are all being revised and renumbered to § 761.216(a).

40 CFR 761.211(c)—unmanifested waste report: The procedure described in § 761.211(c) is similar to that of § 264.76(a). Both sections contain instructions on when and how to complete an unmanifested waste report. However, § 761.211(c) contains language stating that the unmanifested waste report will be sent to the Regional Administrator for the Region in which the commercial storage or disposal facility is located and to the Regional Administrator for the Region in which the PCB waste originated, where § 264.76(a) only states that the unmanifested waste report be sent to the Regional Administrator. EPA believes it is sufficient to only send the unmanifested PCB waste report to the Regional Administrator for the Region in which the commercial storage or disposal facility is located. Also, the form for the unmanifested waste report, EPA Form 8700–13B, was removed from the regulations on January 28, 1983 (48 FR 3977), so that will not be included in the regulations. The language from § 264.76(a) is included in § 761.216(a), which is codified through this rule, and § 761.211(c) will be removed from the CFR. Please note that § 761.211(a), (b), and (c) are all being revised and renumbered to § 761.216(a). Furthermore, § 264.76(a)(5) contains instructions on including the same generalized information on the unmanifested waste report in greater detail than § 761.211(c). Language from § 264.76(a)(5) will therefore be included in § 761.216(a)(5), which will be codified through this rule.

40 CFR 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5)—details included on the unmanifested waste report: The intent of the language in §§ 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) matches that of §§ 264.76(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7). All sections contain details of what information needs to be included with the unmanifested waste report. Sections 761.216(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7), codified through this rule, will contain language from §§ 264.76(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7) to maintain consistency with the RCRA regulations. Sections 761.211(c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) will be removed from the CFR.

40 CFR 761.211(c)(6)—details included on the unmanifested waste report: Sections 761.211(c)(6), (c)(6)(i), and (c)(6)(ii) contain details of information needed to be included with the unmanifested PCB waste report. These details are unique to the unmanifested PCB waste report. Thus, §§ 761.211(c)(6), (c)(6)(i), and (c)(6)(ii) will be retained and renumbered as §§ 761.216(a)(8), (a)(8)(i), and (a)(8)(ii).

40 CFR 264.76(a)(6)—certification of the unmanifested waste report: Part 761 does not contain a provision similar to § 264.76(a)(6). Section 264.76(a)(6) contains instructions on including a ''certification signed by the owner or operator of the facility or his authorized representative'' with the unmanifested waste report. This certification is just the signature of the owner or operator of the facility on the unmanifested waste report. Even though part 761 does not explicitly state that a signature should be included, EPA believes that this was just an oversight in part 761 and the unmanifest PCB waste reports should be signed by the owner or operator of the facility. Section 761.216(a)(6), codified through this rule, will therefore contain language from § 264.76(a)(6).

G. Revisions to the PCB Regulations Under 40 CFR 761.215 (Exception Reporting)

EPA used the following table (Table 7) to compare the PCB regulations under § 761.215 to the equivalent or relevant section in the RCRA regulations in 40 CFR part 262, which is § 262.42.

TABLE 7

CFR Part 761 Section	CFR Part 262 Section	Description	Match (Y/N)	New 761 CFR
761.215 Exception reporting ..	262.42 Exception reporting.			
761.215(a)	262.42(a)(1)	Exception Reporting	Y	761.217(a)(1).
761.215(b)	262.42(a)(2)	Exception Reporting	Y	761.217(a)(2).
761.215(b)(1)	262.42(a)(2)(i)	Exception Reporting	Y	761.217(a)(2)(i).
761.215(b)(2)	262.42(a)(2)(ii)	Exception Reporting	Y	761.217(a)(2)(ii).
	262.42(b)	Exception Reporting	N	see description below.
	262.42(c)	Exception Reporting	N	761.217(b).
	262.42(c)(1)	Exception Reporting	N	761.217(b)(1).
	262.42(c)(2)	Exception Reporting	N	761.217(b)(2).
761.215(c)		One-year Exception Report ..	N	761.219(a).
761.215(c)(1)		One-year Exception Report ..	N	761.219(a)(1).
761.215(c)(2)		One-year Exception Report ..	N	761.219(a)(2).
761.215(d)		One-year Exception Report ..	N	761.219(b).
761.215(d)(1)		One-year Exception Report ..	N	761.219(b)(1).
761.215(d)(2)		One-year Exception Report ..	N	761.219(b)(2).
761.215(e)		One-year Exception Report ..	N	761.219(c).
761.215(e)(1)		One-year Exception Report ..	N	761.219(c)(1).
761.215(e)(2)		One-year Exception Report ..	N	761.219(c)(2).
761.215(e)(2)(i)		One-year Exception Report ..	N	761.219(c)(2)(i).
761.215(e)(2)(ii)		One-year Exception Report ..	N	761.219(c)(2)(ii).
761.215(e)(2)(iii)		One-year Exception Report ..	N	761.219(c)(2)(iii).
761.215(e)(2)(iv)		One-year Exception Report ..	N	761.219(c)(2)(iv).

TABLE 7—Continued

CFR Part 761 Section	CFR Part 262 Section	Description	Match (Y/N)	New 761 CFR
761.215(e)(2)(v)		One-year Exception Report ..	N	761.219(c)(2)(v).
761.215(f)		One-year Exception Report ..	N	761.219(d).

Listed below are the explanations of each change made to § 761.215 in the table above.

40 CFR 761.215(a)—exception report: The intent of the language in § 761.215(a) closely matches that of § 262.42(a)(1). Both sections contain details of how a generator should proceed when a signed manifest is not received. Section 262.42(a)(1) is strictly for hazardous waste generators of over 1000 kg waste in a calendar month, where § 761.215(a) is for all PCB waste generators. Section 761.217(a)(1), codified through this rule, will retain the language from § 761.215(a) to ensure that all PCB waste generators are covered.

40 CFR 761.215(b)—when to submit an exception report: The intent of the language in § 761.215(b) closely matches that of § 262.42(a)(2). Both sections contain details of when an exception report should be submitted. However, § 761.215(b) states the exception report should be submitted to the EPA no later than 45 days from the date on which the generator should have received the manifest, where § 262.42(a)(2) does not. Section 761.217(a)(2), codified through this rule, will retain the language from § 761.215(b) to maintain the deadline for submitting an exception report.

40 CFR 761.215(b)(1) and (b)(2)—details included in the exception report: The language in §§ 761.215(b)(1) and (b)(2) matches that of §§ 262.42(a)(2)(i) and (a)(2)(ii). All sections contain details of what information needs to be included with the exception report. Sections 761.217(a)(2)(i) and (a)(2)(ii), codified through this rule, will contain language from §§ 262.42(a)(2)(i) and (a)(2)(ii) to maintain consistency with the RCRA regulations. Sections 761.215(b)(1) and (b)(2) will be removed from the CFR.

40 CFR 262.42(b)—exception reporting instructions for generators of hazardous waste between 100kg and 1000kg in a calendar month: Part 761 does not contain a provision similar to § 262.42(b). Section 262.42(b) contains special exception reporting instructions for generators of hazardous waste between 100 kg and 1000 kg waste in a calendar month. The instructions in § 262.42(b) are not relevant to generators for PCB waste, which does not have such quantity limitations. Section 262.42(b) will therefore not be referenced in the PCB regulations.

40 CFR 262.42(c), (c)(1), and (c)(2)—rejected shipments forwarded to an alternate facility: Sections 262.42(c), (c)(1), and (c)(2) contain information on exception reporting for rejected shipments forwarded to an alternate facility. Even though the substance of §§ 262.42(c), (c)(1), and (c)(2) is relevant to PCB waste, part 761 does not currently have provisions similar to §§ 262.42(c), (c)(1), and (c)(2). Sections 761.217(b), (b)(1), and (b)(2), codified through this rule, will therefore contain language from §§ 262.42(c), (c)(1), and (c)(2), except for the residue language; there is no provision similar under the PCB regulations for § 261.7 *Residues of hazardous waste in empty containers.* Also, the 60-day timeframe in § 262.42(c)(2) is not relevant because § 262.42(b) is not relevant to part 761.

40 CFR 761.215(c), (d), (e), (f)—One-year exception report for PCB waste: Sections 761.215(c), (d), (e), and (f) contain details on the One-year Exception Report, which is unique to PCB waste. The One-year Exception Report is different from the exception reporting detailed in §§ 761.215(a), (b), and § 262.42, and therefore §§ 761.215(c), (d), (e), and (f) will be retained and renumbered under § 761.219, which is codified through this rule.

H. Revisions to other Sections in 40 CFR 761

There are four other sections in part 761 which refer to re-numbered sections in the regulations that need to be updated or reserved: §§ 761.60(j)(1)(vii), 761.65(i)(2) and 761.65(i)(4), and 761.180(a)(2)(viii).

40 CFR 761.60(j)(1)(vii):

Section 761.60(j)(1)(vii) references sections 761.207 through 761.218, which will now correspond to sections 761.207 through 761.219.

40 CFR 761.65(i)(2):

Section 761.65(i)(2) references section 761.208 which will now correspond to sections 761.210 through 761.213.

40 CFR 761.65(i)(4):

Section 761.65(i)(4) references sections 761.208, 209, and 761.215(a) and (b) which will now correspond to sections 761.210 through 761.213, 761.213 and 761.214, and 761.217, respectively.

40 CFR 761.180(a)(2)(viii):

Section 761.180(a)(2)(viii) contains a requirement for the owner or operator of a facility to retain a written record of all telephone or other confirmations to be included in the annual document log. EPA believes this requirement is no longer necessary to effectively monitor compliance for exception reporting. Section 761.180(a)(2)(viii) will be effectively removed by changing the section to 'reserved', to avoid renumbering downstream sections.

IV. Statutory and Executive Order Reviews

As explained above, this action updates and clarifies existing regulations for manifesting PCB wastes to match, to the extent possible, the existing regulations for manifesting RCRA hazardous waste using the Uniform Hazardous Waste Manifest form. Once updated, the regulations will match what is currently being done by industry. For that reason, this action:

- Is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), for State, local, or tribal governments or the private sector and contains no regulatory requirements that might significantly or uniquely affect small governments;
- Does not have Federalism implications as specified in Executive Order 13132: Federalism (64 FR 43255, August 10, 1999);
- Does not have tribal implications as specified by Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), because, as the rule does not make any substantive changes, it will not impose substantial direct costs on tribal governments or preempt tribal law;
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order

13045: Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997);

• Is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866;

• Does not involve technical standards, thus the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply; and

• Does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations under Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) because it does not affect the level of protection provided to human health or the environment.

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in hazardous waste treatment and disposal as defined by NAICS code 562211, with annual receipts of less than 12.5 million dollars (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule merely updates the existing regulations for manifesting PCB wastes to match the existing Uniform Hazardous Waste Manifest form. Once updated, the regulations will match what is currently being conducted by industry.

B. Congressional Review Act

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

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Manifest, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: August 17, 2012.

Lisa Feldt,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 761—[AMENDED]

■ 1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

Subpart D—[Amended]

■ 2. Section 761.60 is amended by revising paragraph (j)(1)(vii) to read as follows:

§ 761.60 Disposal requirements.

* * * * *

(j) * * *

(1) * * *

(vii) Use manifests pursuant to subpart K of this part for all R&D PCB wastes being transported from the R&D facility to an approved PCB storage or disposal facility. However, §§ 761.207 through 761.219 do not apply if the residuals or treated samples are returned either to the physical location where the samples were collected or a location where other regulated PCBs from the physical location where the samples were collected are being stored for disposal.

* * * * *

■ 3. Section 761.65 is amended by revising paragraphs (i)(2) and (i)(4) to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(i) * * *

(2) A laboratory sample is exempt from the manifesting requirements in §§ 761.210 through 761.213 when:

(i) The sample is being transported to a laboratory for the purpose of testing.

(ii) The sample is being transported back to the sample collector after testing.

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing.

(iv) The sample is being stored in a laboratory before testing.

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector.

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

* * * * *

(4) When the concentration of the PCB sample has been determined, and its use is terminated, the sample must be properly disposed. A laboratory must either manifest the PCB waste to a disposer or commercial storer, as required under §§ 761.210 through 761.213, retain a copy of each manifest, as required under §§ 761.213 and 761.214, and follow up on exception reporting, as required under § 761.217, or return the sample to the sample collector who must then properly dispose of the sample. If the laboratory returns the sample to the sample collector, the laboratory must comply with the shipping requirements set forth in paragraphs (i)(3)(i) through (i)(3)(iii) of this section.

* * * * *

Subpart J—[Amended]

■ 4. Section 761.180 is amended by removing and reserving paragraph (a)(2)(viii) to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) * * *

(2) * * *

(viii) [Reserved]

* * * * *

Subpart K—[Amended]

■ 5. Section 761.207 is revised to read as follows:

§ 761.207 The manifest—general requirements.

(a) A generator who transports, or offers for transport PCB waste for commercial off-site storage or off-site disposal, and commercial storage or disposal facility who offers for transport a rejected load of PCB waste, must prepare a manifest on EPA Form 8700–22, and, if necessary, a continuation sheet, according to the instructions included in the appendix of 40 CFR Part 262. The generator shall specify:

(1) For each bulk load of PCBs, the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste. (Item 15—Special Handling Instructions box)

(2) For each PCB Article Container or PCB Container, the unique identifying number, type of PCB waste (*e.g.,* soil, debris, small capacitors), earliest date of removal from service for disposal, and weight in kilograms of the PCB waste contained. (Item 15—Special Handling Instructions box)

(3) For each PCB Article not in a PCB Container or PCB Article Container, the serial number if available, or other identification if there is no serial number, the date of removal from service for disposal, and weight in kilograms of the PCB waste in each PCB Article. (Item 15—Special Handling Instructions box)

Note 1 to paragraph (a): EPA Form 8700–22A is not required as the PCB manifest continuation sheet. In practice, form 8700–22A does not have adequate space to list required PCB-specific information for several PCB articles. However, if form 8700–22A fits the needs of the user community, the form is permissible.

Note 2 to paragraph (a): PCB waste handlers should use the Part 262 appendix instructions as a guide, but should defer to the Part 761 manifest regulations whenever there is any difference between the Part 761 requirements and the instructions in the appendix to Part 262. The differences should be minimal.

Note 3 to paragraph (a): PCBs are not regulated under RCRA, thus do not have a RCRA waste code. EPA does not require boxes 13 and 31 on forms 8700–22 and 8700–22A (if used), respectively, to be completed for shipments only containing PCB waste. However, some States track PCB wastes as State-regulated hazardous wastes, and assign State hazardous waste codes to these wastes. In such a case, the user should follow the State instructions for completing the waste code fields.

(b) A generator must designate on the manifest one facility which is approved to handle the PCB waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is approved to handle his PCB waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the PCB waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the PCB waste.

(e) The requirements of this section apply only to PCB wastes as defined in § 761.3. This includes PCB wastes with PCB concentrations below 50 ppm where the PCB concentration below 50 ppm was the result of dilution; these PCB wastes are required under § 761.1(b) to be managed as if they contained PCB concentrations of 50 ppm and above. An example of such a PCB waste is spill cleanup material containing <50 ppm PCBs when the spill involved material containing PCBs at a concentration of ≥50 ppm. However, there is no manifest requirement for material currently below 50 ppm which derives from pre-April 18, 1978, spills of any concentration, pre-July 2, 1979, spills of <500 ppm PCBs, or materials decontaminated in accordance with § 761.79.

(f) The requirements of this subpart do not apply to the transport of PCB wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way.

■ 6. Section 761.208 is revised to read as follows:

§ 761.208 Obtaining manifests.

(a)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under 40 CFR 262.21 (c) and (e). A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) PCB waste generator, transporter or, designated facility; or

(iv) PCB waste broker or other preparer who prepares or arranges shipments of PCB waste for transportation.

(2) A generator must determine whether the generator state or the consignment state for a shipment regulates PCB waste as a State-regulated hazardous waste. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(b) [Reserved]

■ 7. Section 761.209 is revised to read as follows:

§ 761.209 Number of copies of a manifest.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

■ 8. Section 761.210 is revised to read as follows:

§ 761.210 Use of the manifest—Generator requirements.

(a) The generator must:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with § 761.214(a)(1).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of PCB waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each transporter.

(d) For rail shipments of PCB waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail.

(e) For rejected shipments of PCB waste that are returned to the generator by the designated facility (following the procedures of § 761.215(f)), the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment, send a copy of the manifest to the designated facility that

returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

■ 9 Section 761.211 is revised to read as follows:

§ 761.211 Manifest system—Transporter requirements.

(a)(1) A transporter shall not accept PCB waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with § 761.210(a)(1), except that a manifest is not required if any one of the following conditions exists:

(i) The shipment of PCB waste consists solely of PCB wastes with PCB concentrations below 50 ppm, unless the PCB concentration below 50 ppm was the result of dilution, in which case § 761.1(b) requires that the waste be managed as if it contained PCBs at the concentration prior to dilution.

(ii) The PCB waste is accepted by the transporter for transport only to a storage or disposal facility owned or operated by the generator of the PCB waste.

(2) [Reserved]

(b) Before transporting the PCB waste, the transporter must sign and date the manifest acknowledging acceptance of the PCB waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter shall ensure that the manifest accompanies the PCB waste.

(d) A transporter who delivers PCB waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with § 761.214; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of paragraphs (c), (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) The PCB waste is delivered by water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding EPA identification number, generator certification, and signatures) accompanies the PCB waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the PCB waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with § 761.214.

(f) For shipments involving rail transportation, the requirements of paragraphs (c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting PCB waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the PCB waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or,

(B) The designated facility, if the shipment is delivered to that facility by rail;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with § 761.214.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) accompanies the PCB waste at all times.

Note: Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering PCB waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with § 761.214.

(4) When delivering PCB waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with § 761.214.

(5) Before accepting PCB waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

■ 10. Section 761.212 is added to read as follows:

§ 761.212 Transporter compliance with the manifest.

(a) The transporter must deliver the entire quantity of PCB waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the PCB waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter.

(b)(1) If the PCB waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(2) If PCB waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with § 761.214, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 40 CFR 761.215(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with § 761.214, and give a copy of the manifest containing this information to the rejecting designated

facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 40 CFR 761.215(e)(1) through (6).

(iii) No provision of this section shall be construed to affect or limit the applicability of any requirement applicable to transporters of PCB waste under regulations issued by the Department of Transportation (DOT) and set forth at 49 CFR Part 171.

■ 11. Section 761.213 is added to read as follows:

§ 761.213 Use of manifest—Commercial storage and disposal facility requirements.

(a)(1) If a commercial storage or disposal facility receives PCB waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the PCB waste covered by the manifest was received, that the PCB waste was received except as noted in the discrepancy space of the manifest, or that the PCB waste was rejected as noted in the manifest discrepancy space.

(2) If a commercial storage or disposal facility receives an off-site shipment of PCB waste accompanied by a manifest, the owner or operator, or his agent, shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 761.215(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a commercial storage or disposal facility receives, from a rail or water (bulk shipment) transporter, PCB waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the PCB waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 761.215(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

Note to paragraph (b)(2): The Agency does not intend that the owner or operator of a facility whose procedures include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 761.215(a), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

Note to paragraph (b)(4): Section 761.210(c) requires the generator to send three copies of the manifest to the facility when PCB waste is sent by rail or water (bulk shipment).]

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever an off-site shipment of PCB waste is initiated from a commercial storage or disposal facility, the owner or operator of the commercial storage or disposal facility shall comply with the manifest requirements that apply to generators of PCB waste (§ 761.207).

■ 12. Section 761.214 is added to read as follows:

§ 761.214 Retention of manifest records.

(a)(1) A generator must keep a copy of each manifest signed in accordance with § 761.210(a) for three years or until he receives a signed copy from the designated facility which received the PCB waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter. A generator subject to annual document requirements under § 761.180 shall retain copies of each manifest for the period required by § 761.180(a).

(2) A transporter of PCB waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the PCB waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in § 761.211(e)(2) for a period of three years from the date the PCB waste was accepted by the initial transporter.

(c) For shipments of PCB waste by rail within the United States:

(1) The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in § 761.211(f)(2) for a period of three years from the date the PCB waste was accepted by the initial transporter; and

(2) The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the PCB waste was accepted by the initial transporter.

Note to paragraph (c): Intermediate rail transporters are not required to keep records pursuant to these regulations.

(d) A generator must keep a copy of each Exception Report for a period of at least three years from the due date of the report.

(e) The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

■ 13. Section 761.215 is revised to read as follows:

§ 761.215 Manifest discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of PCB waste designated on the manifest or shipping paper, and the quantity and type of PCB waste a facility actually receives; or

(2) Rejected wastes, which may be a full or partial shipment of PCB waste that the designated facility cannot accept.

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight or variations greater than 10 percent in weight of PCB waste in containers; for batch waste, any variation in piece count, such as a discrepancy of one PCB Transformer or PCB Container or PCB Article Container in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as the substitution of solids for liquids or the substitution of high concentration PCBs (above 500 ppm) with lower concentration materials.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.,* with telephone conversations). If the

discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting the PCB waste, the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection identification.

(2) While the facility is making arrangements for forwarding rejected wastes to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 761.207(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with § 761.207(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections that are returned to the generator, the facility must also comply with the exception reporting requirements in § 761.217(a).

(g) If a facility rejects a waste after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

■ 14. Section 761.216 is added to read as follows:

§ 761.216 Unmanifested waste report.

(a) If a facility accepts for storage or disposal any PCB waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by § 761.211(e), and the owner or operator of the commercial storage or disposal facility cannot contact the generator of the PCB waste, then he shall notify the Regional Administrator of the EPA region in which his facility is located of the unmanifested PCB waste so that the Regional Administrator can determine whether further actions are required before the owner or operator may store or dispose of the unmanifested PCB waste, and additionally the owner or operator must prepare and submit a letter to the Regional Administrator within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested PCB waste the facility received;

(5) The method of storage or disposal for each PCB waste;

(6) Signature of the owner or operator of the facility or his authorized representative; and,

(7) A brief explanation of why the waste was unmanifested, if known.

(8) The disposition made of the unmanifested waste by the commercial storage or disposal facility, including:

(i) If the waste was stored or disposed by that facility, was the generator identified and was a manifest subsequently supplied.

(ii) If the waste was sent back to the generator, why and when.

(b) [Reserved]

■ 15. Section 761.217 is added to read as follows:

§ 761.217 Exception reporting.

(a)(1) A generator of PCB waste, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter, shall immediately contact the transporter and/or the owner or operator of the designated facility to determine the status of the PCB waste.

(2) A generator of PCB waste subject to the manifesting requirements shall submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the hand written signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report shall be submitted to EPA no later than 45 days from the date on which the generator should have received the manifest. The Exception Report shall include the following:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the PCB waste and the results of those efforts.

(b) For rejected shipments of PCB waste that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of § 761.215(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35- and 45-day timeframes begin the date the waste was accepted by the initial transporter forwarding the PCB waste shipment from the designated facility to the alternate facility.

■ 16. Section 761.219 is added to read as follows:

§ 761.219 One-year exception reporting.

(a) A disposer of PCB waste shall submit a One-year Exception Report to the EPA Regional Administrator for the Region in which the disposal facility is located no later than 45 days from the end of the 1-year storage for disposal date when the following occurs:

(1) The disposal facility receives PCBs or PCB Items on a date more than 9 months from the date the PCBs or PCB Items were removed from service for disposal, as indicated on the manifest or continuation sheet; and

(2) Because of contractual commitments or other factors affecting the facility's disposal capacity, the disposer of PCB waste could not dispose of the affected PCBs or PCB Items within 1 year of the date of removal from service for disposal.

(b) A generator or commercial storer of PCB waste who manifests PCBs or PCB Items to a disposer of PCB waste shall submit a One-year Exception Report to the EPA Regional Administrator for the Region in which the generator or commercial storer is located no later than 45 days from the date the following occurs:

(1) The generator or commercial storer transferred the PCBs or PCB Items to the disposer of PCB waste on a date within 9 months from the date of removal from service for disposal of the affected PCBs or PCB Items, as indicated on the manifest or continuation sheet; and

(2) The generator or commercial storer either has not received within 13 months from the date of removal from service for disposal a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items, or the generator or commercial storer receives a Certificate of Disposal confirming disposal of the affected PCBs or PCB Items on a date more than 1 year after the date of removal from service.

(c) The One-year Exception Report shall include:

(1) A legible copy of any manifest or other written communication relevant to the transfer and disposal of the affected PCBs or PCB Items.

(2) A cover letter signed by the submitter or an authorized representative explaining:

(i) The date(s) when the PCBs or PCB Items were removed from service for disposal.

(ii) The date(s) when the PCBs or PCB Items were received by the submitter of the report, if applicable.

(iii) The date(s) when the affected PCBs or PCB Items were transferred to a designated disposal facility.

(iv) The identity of the transporters, commercial storers, or disposers known to be involved with the transaction.

(v) The reason, if known, for the delay in bringing about the disposal of the affected PCBs or PCB Items within 1 year from the date of removal from service for disposal.

(d) PCB/radioactive waste that is exempt from the 1-year storage for disposal time limit pursuant to § 761.65(a)(1) is also exempt from the exception reporting requirements of paragraphs (a), (b), and (c) of this section.

[FR Doc. 2012–21674 Filed 9–5–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Part 3052

[Docket No. DHS–2009–0085]

RIN 1601–AA28

Homeland Security Acquisition Regulation (HSAR); Revision Initiative [HSAR Case 2009–002]; Correction

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Final rule; correction.

SUMMARY: DHS is correcting a final rule that appeared in the **Federal Register** of August 22, 2012. As published, the final rule incorrectly uses the word (DATE) in several places in part 3052 of title 48 of the Code of Federal Regulations. We are correcting each instance of (DATE) to correctly state the appropriate date of ''(SEP 2012)''. The final rule amended multiple sections of the Homeland Security Acquisition Regulation (HSAR) to align existing content with the Federal Acquisition Regulation (FAR); implemented Section 695 of the Post-

Katrina Emergency Management Reform Act of 2006 by restricting the length of certain noncompetitive contracts entered into by the Department of Homeland Security to facilitate the response to or recovery from a natural disaster, act of terrorism, or other manmade disaster; clarified agency acquisition regulations; and made editorial corrections.

DATES: Effective September 21, 2012.

FOR FURTHER INFORMATION CONTACT: Teresa McConahie, Office of the Chief Procurement Officer, Department of Homeland Security, (202) 447–0271.

SUPPLEMENTARY INFORMATION: As published, the final rule incorrectly uses the word (DATE) in several places in part 3052 of title 48 of the Code of Federal Regulations. We are correcting each instance of (DATE) to correctly state the appropriate date of ''(SEP 2012)''. In FR Doc. 2012–20440 appearing on page 50631 in the **Federal Register** of Wednesday, August 22, 2012, the following corrections are made:

§ 3052.203–70 [Corrected]

■ 1. On page 50636, in the first column, amending section 3052.203–70, the title of the clause ''Instructions for Contractor Disclosure of Violations ([DATE])'' is corrected to read ''Instructions for Contractor Disclosure of Violations (SEP 2012)''.

§ 3052.204–71 [Corrected]

■ 2. On page 50636, in the second column, amending section 3052.204–71, the title of the section ''3052.204–71 Contractor employee access ([DATE])'' is corrected to read ''3052.204–71 Contractor Employee Access (SEP 2012)''.

■ 3. On page 50636, amending section 3052.204–71, in the second column, ''Alternate I ([DATE])'' is corrected to read ''Alternate I (SEP 2012)''.

§ 3052.205–70 [Corrected]

■ 4. On page 50636, amending section 3052.205–70, in the second column, the title of the clause ''Advertisements, Publicizing Awards, and Releases ([DATE])'' is corrected to read ''Advertisements, Publicizing Awards, and Releases (SEP 2012).''

■ 5. On page 50636, amending section 3052.205–70, in the third column, ''Alternate I ([DATE])'' is corrected to read ''Alternate I (SEP 2012)''.

§ 3052.212–70 [Corrected]

■ 6. On page 50636, amending section 3052.212–70, in the third column, the title of the clause ''Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items ([DATE])'' is corrected to read ''Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items (SEP 2012)''.

■ 7. On page 50637, amending section 3052.212–70, in the first column, in amendatory instruction 39., ''([DATE])'' is corrected to read ''(SEP 2012)''.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs, Department of Homeland Security.

[FR Doc. 2012–21961 Filed 9–5–12; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

CFR Correction

■ In Title 49 of the Code of Federal Regulations, Parts 400 to 571, revised as of October 1, 2011, on page 603, in § 571.119, Table II is corrected to read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and motorcycles.

* * * * *

TABLE II—MINIMUM STATIC BREAKING ENERGY

[Joules (J) and Inch-Pounds (inch-lbs)]

Tire characteristic	Motorcycle		All 12 rim diameter code or smaller except motorcycle		Light truck and 17.5 rim diameter code or smaller Tubeless		Tires other than Light Truck, Motorcycle, 12 rim diameter code or smaller							
Plunger diameter (mm and inches)	7.94 mm	5/16″					Tube type		Tubeless greater than 17.5 rim diameter code		Tube type		Tubeless greater than 17.5 rim diameter code	
Breaking Energy	J	In-lbs	19.05 mm	3/4″	19.05 mm	3/4″	31.75 mm	1 1/4″	31.75 mm	1 1/4″	38.10 mm	1 1/2″	38.10 mm	1 1/2″
			J	In-lbs	J	In-lbs	J	In-lbs	J	In-lbs	J	In-lbs	J	In-lbs
Load Range:														
A	16	150	67	600	225	2,000								
B	33	300	135	1,200	293	2,600								
C	45	400	203	1,800	361	3,200	768	6,800	576	5,100				
D			271	2,400	514	4,550	892	7,900	734	6,500				
E			338	3,000	576	5,100	1,412	12,500	971	8,600				
F			406	3,600	644	5,700	1,785	15,800	1,412	12,500				
G					711	6,300					2,282	20,200	1,694	15,000
H					768	6,800					2,598	23,000	2,090	18,500
J											2,824	25,000	2,203	19,500
L											3,050	27,000		
M											3,220	28,500		
N											3,389	30,000		

* * * * *

[FR Doc. 2012–22003 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC204

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the fourth seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 2, 2012, through 1200 hrs, A.l.t., October 1, 2012.

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

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

The fourth seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 150 metric tons as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012), for the period 1200 hrs, A.l.t., September 1, 2012, through 1200 hrs, A.l.t., October 1, 2012.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the fourth seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, squids, sharks, octopuses, and sculpins. This prohibition does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock and vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Program for the Central GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 30, 2012.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 31, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–21977 Filed 8–31–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC211

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors (C/Ps) using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2012 Pacific cod total allowable catch apportioned to C/Ps using trawl gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2012, through 2400 hrs, A.l.t., December 31, 2012.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2012 Pacific cod total allowable catch (TAC) apportioned to C/Ps using trawl gear in the Western Regulatory Area of the GOA is 497 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2012 Pacific cod TAC apportioned to C/Ps using trawl gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is

establishing a directed fishing allowance of 497 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by C/Ps using trawl gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for C/Ps using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 30, 2012.

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

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

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

Dated: August 31, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–21976 Filed 8–31–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC205

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Western Regulatory Area of the Gulf of Alaska Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear to vessels using jig gear in the Western Regulatory Area of the Gulf of Alaska management area. This action is necessary to allow the 2012 total allowable catch of Pacific cod to be harvested.

DATES: Effective September 1, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Gulf of Alaska (GOA) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2012 Pacific cod total allowable catch specified for catcher vessels using trawl gear in the Western Regulatory Area of the GOA is 7,952 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012). The Administrator, Alaska Region (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 150 mt of the 2012 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A)(*3*). In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that the jig sector currently has the capacity to harvest this excess allocation and reallocates 150 mt of Pacific cod from catcher vessels using trawl gear to vessels using jig gear.

The harvest specifications for Pacific cod included in the final 2012 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012) are revised as follows: 7,802 mt for catcher vessels using trawl gear and 465 mt to vessels using jig gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from catcher vessels using trawl gear to vessels using jig gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 30, 2012.

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

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

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

Dated: August 31, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–21978 Filed 8–31–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 173
Thursday, September 6, 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

Rural Utilities Service

7 CFR Parts 1710, 1717, 1721, 1724, and 1730

RIN 0572–AC19

Energy Efficiency and Conservation Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Proposed Rulemaking; correction.

SUMMARY: The Rural Utilities Service (RUS) published a document in the **Federal Register** on July 26, 2012, proposing policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons in their service territory. The comment period closing date was incorrect.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, USDA-Rural Utilities Service, 1400 Independence Avenue SW., Stop 1522, Washington, DC 20250–1522, telephone (202) 690–1078 or email to *michele.brooks@wdc.usda.gov.*

Correction

In the **Federal Register** of July 26, 2012, in FR Doc. 2012–17784, on page 43723, in the first column, under the heading ''**DATES**,'' the date should read September 26, 2012.

Dated: August 29, 2012.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–21779 Filed 9–5–12; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2012–0204]

Clarification of Submission of Requests for Relief or Alternatives From the Regulatory Requirements Pertaining to Codes and Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is seeking public comment on a draft regulatory issue summary (RIS) that provides information on requests for alternatives to and relief from the regulatory requirements pertaining to Codes and Standards. The draft RIS also provides clarification when relief is requested by licensees and applicants where American Society of Mechanical Engineers Code requirements are determined impractical, and when proposed alternatives to the regulations are submitted to the NRC.

DATES: Submit comments by October 22, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0204.

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–2012–0204. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Alexion, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1326, email: *Thomas.Alexion@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0204 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0204.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft RIS ''Clarification of Submission of Requests for Relief or Alternatives Under 10 CFR 50.55a,'' is available electronically under ADAMS Accession No. ML111150172.
- 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–2012–0204 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission.

The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

Addressees

All holders of a construction permit and an operating license for a nuclear power reactor under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

All holders of and applicants for a combined license (COL), standard design certification, standard design approval, or manufacturing license under 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

Intent

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing this regulatory issue summary (RIS) to provide information on requests for alternatives to and relief from the requirements of 10 CFR 50.55a, ''Codes and Standards,'' which incorporates by reference the American Society of Mechanical Engineers, *Boiler and Pressure Vessel Code* (ASME BPV Code) and *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code) for ASME Code Class 1, 2, and 3 components,[1] and Class MC and CC pressure-retaining components and their integral attachments. Specifically, this RIS provides clarification when relief is requested by licensees and applicants pursuant to 10 CFR 50.55a(f)(5)(iii) and 10 CFR 50.55a(g)(5)(iii) where ASME Code requirements are determined impractical, and when proposed alternatives to the regulations in 10 CFR 50.55a are submitted to the NRC under 10 CFR 50.55a(a)(3)(i) or 10 CFR 50.55a(a)(3)(ii).

This RIS requires no action or written response on the part of an addressee.

Background Information

The NRC requirements for the application and use of industry codes and standards applicable to nuclear power plants are set forth in 10 CFR 50.55a, *Codes and Standards.* Paragraph (b) of 10 CFR 50.55a lists the NRC-approved ASME BPV Codes and Addenda, OM Codes, and ASME Code Cases that are approved or mandated for use (together with applicable NRC-imposed conditions on their use). Paragraphs (c) through (g) set forth the specific regulatory requirements mandating or approving the application and use of ASME BPV and OM Codes.

Section 50.55a also provides two separate regulatory processes for applicants or licensees to request NRC approval to depart from the requirements of these codes and standards. The general process for seeking NRC approval for use of an alternative to one or more provisions of a code or standard listed in 10 CFR 50.55a (which includes Codes other than the various ASME Codes and Code Cases) is set forth in 10 CFR 50.55a(a)(3). The *specific* process for NRC grants of *relief* from inservice testing (IST) and inservice inspection (ISI) requirements because of impracticality is set forth in 10 CFR 50.55a(f)(5)(iii) and (g)(5)(iii), respectively. The term, ''relief request,'' is commonly misused to address the request for NRC approval of alternatives under 10 CFR 50.55a(a)(3), as opposed to the correct usage with respect to claims of IST and ISI impracticality.

For new reactors licensed under 10 CFR Part 52, when a COL holder finds during plant construction that compliance with ASME Code, Section III, or Institute of Electrical and Electronics Engineers (IEEE) Standard 603 requirements would result in hardship or unusual difficulty, or when they would like to use a different approach for meeting construction[2] requirements of the ASME BPV Code, Section III, or the IEEE Standard 603, it must submit a proposed alternative to (1) the construction requirements of Section III of the ASME BPV Code for ASME Code Class 1, 2 and 3 components, or (2) the requirements of IEEE Standard 603 for protection and safety systems for authorization by the NRC in accordance with 10 CFR 50.55a(a)(3)(i) or 10 CFR 50.55a(a)(3)(ii). The alternative is required to be submitted before its implementation. The timing for submission of alternatives and relief requests are discussed later in this RIS.

Generally, relief and alternative requests do not involve license amendments. Instead, the NRC staff issues a letter with a safety evaluation on the licensee's or applicant's request to authorize the alternative to, or grant relief from, an ASME BPV Code (Section III or XI) or OM Code requirement. However, there are times when relief requests or alternatives might involve changes to plant technical specifications or changes to Tier 2* information associated with a design certification (note that Tier 2* information is defined in 10 CFR Part 52, Appendices A through D). In these cases, a license amendment would also be needed. In addition, the NRC may authorize an alternative to an ASME Code design requirement in the context of an application to certify a standard design.

Summary of Issue

The NRC staff is issuing this RIS to address the following specific issues associated with submittals under 10 CFR 50.55a:

- The content of IST-related or ISI-related requests for relief or alternatives under 10 CFR 50.55a
- The timing of alternatives submitted in accordance with 10 CFR 50.55a(a)(3)
- The timing of relief requests submitted in accordance with 10 CFR 50.55a(f)(5) or 10 CFR 50.55a(g)(5)

The Content of IST-Related or ISI-Related Requests for Relief or Alternatives Under 10 CFR 50.55a

Licensees requesting relief from the requirements of 10 CFR 50.55a(f)(6)(i) and 10 CFR 50.55a(g)(6)(i) due to impracticality must demonstrate that ASME Code requirements are impractical within the limitations of design, geometry, and materials of construction. In addition, the NRC staff may impose alternative requirements and may grant the relief only if it determines that granting the relief is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest giving due consideration to the burden upon the licensee that could result if the requirements were imposed on the facility. In doing this,

[1] Incoming inservice inspection requirements of Class MC components in accordance with ASME Section XI, Subsection IWE and Class CC components in accordance with Subsection IWL.

[2] The term ''construction'' is an all-inclusive term comprising materials, design, fabrication, examination, testing, inspection, and certification, as defined in the ASME BPV Code, Section III, Article NCA–9000.

the NRC staff assesses the limitations of the examination or testing, evaluates the susceptibility to known degradation, mechanisms or failure modes, the consequences of a failure at the location where the test or examination is impractical, and if any other inspections or tests should be implemented to compensate for the impracticality.

Licensees and applicants proposing alternatives in accordance to 10 CFR 50.55a(a)(3)(i) or 10 CFR 50.55a(a)(3)(ii) must demonstrate that (1) the proposed alternatives would provide an acceptable level of quality and safety, or (2) compliance with the specified requirements would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

Many initial requests for alternatives to or relief from IST or ISI requirements in the ASME BPV Code and OM Code submitted by licensees and applicants have not been supported by adequate descriptive and detailed technical information, thus necessitating requests for additional information. Based on whether the submittal involves a relief or alternative request, detailed information is necessary: (1) To document the impracticality of the ASME BPV or OM Code requirements because of the limitations of design, geometry, or materials of construction of components, and to allow the NRC to make a finding on plant safety where an ASME BPV Code or OM Code requirement is determined to be impractical; or (2) to determine whether the use of a proposed alternative will provide an acceptable level of quality and safety or whether compliance with the specified ASME Code requirements would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

Licensees and applicants should consider the information needed for the NRC to make a finding to grant relief or to authorize an alternative when preparing the request submittal. For example, relief requests submitted with a justification that the requirements are ''impractical,'' that the component is ''inaccessible,'' or requests that use any other categorical basis should provide information to permit an evaluation of that relief request.

The guidance in this section illustrates the extent of the information necessary for the NRC to make a proper evaluation and to adequately document in a safety evaluation the basis for granting relief from or authorizing an alternative to the ASME BPV Code or OM Code. Requests for additional information and delays in completing the review can be considerably reduced if the initial submittal by the licensee or applicant provides this information.

Each submittal for a relief or alternative request should include the following, with adequate information so that it can serve as a standalone document:

- Provide the start and end date of the current or past 10-year IST or ISI interval and the applicable edition or addendum of the ASME BPV or OM Codes from which the relief or alternative is requested.
- If the licensee received an approval to update to a later edition or addendum of the ASME BPV or OM Codes for the current or past 10-year IST or ISI interval, provide the date of the NRC safety evaluation.
- Provide the ASME BPV or OM Code examination or test requirements for the pump(s), valve(s), weld(s), or component(s) for which the relief or alternative is requested.
- State the number of items associated with the requested relief or alternative.
- Identify the specific ASME BPV Code or OM Code requirement that has been determined to be impractical or will be replaced by the alternative.
- For relief from or an alternative to the ASME BPV Code ISI examination requirements, provide an itemized list of the specific pump(s), valve(s), weld(s), or component(s) for which the relief or alternative is requested. List the type of valve(s) or pump(s) or the ASME BPV Code specification of base metal and weld material in weld joints piping, components (e.g., tees, elbows), nozzles, and vessels.
- For relief from or an alternative to the ASME BPV Code ISI examination requirements, estimate the percentage of the examination coverage required under the ASME BPV Code that has been completed for each of the individual existing weld(s) or component(s) associated with the relief or alternative.
- Submit information to support the determination that the requirement is impractical (i.e., state and explain the basis for requesting relief) or the basis for the alternative request. If the licensee cannot perform the examination or testing required by the ASME BPV or OM Codes because of a limitation or obstruction, describe or provide drawings showing the specific limitation or obstruction and the achievable examination coverage or testing that can be performed.
- For an alternative request, identify the alternative test or nondestructive examination methods and techniques proposed (1) in lieu of the requirements of the ASME BPV or OM Codes, or (2) to supplement partial ASME OM Code testing or ASME BPV Code examinations performed or special processes.
- Discuss the failure consequences of the weld joint(s) or component(s) that would not receive the examination specified in the ASME BPV Code. Discuss any changes expected in the overall level of plant safety if the licensee performs the proposed alternative examination in lieu of the examination specified in the ASME BPV Code.
- For an alternative request, provide a basis to demonstrate that (1) the proposed alternative would provide an acceptable level of quality and safety, or (2) compliance with the specified requirements would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.
- State when the proposed alternative testing or examination would be implemented and performed.
- State when the request for relief or alternative would apply during the inspection or testing period or interval (e.g., that it would occur during the refueling outage or the remainder of interval, or that the request is to defer an examination or testing to some other time).
- State the time period for which the requested relief or alternative is needed.
- For a performance-based IST relief or alternative request, discuss the aggregate risk associated with proposed relief or alternative based on the results of a comprehensive risk analysis. Also, discuss how the failure of the affected components would impact core damage frequency and large early release frequency.
- Licensees should submit a technical justification or data to support the relief or alternative request. Stating without substantiation that a change will not affect the level of quality is unsatisfactory (e.g., stating that a licensee does not agree with an ASME BPV or OM Code requirement is not considered adequate justification for granting relief or authorizing an alternative). If the licensee is requesting relief or an alternative because of issues with component inaccessibility, the request should include a detailed description or drawing that depicts the inaccessibility.

For the NRC staff to make a determination for an alternative for hardship regarding radiation exposure during an examination or test, the licensee should submit specific information as noted below:

Radiation exposures received by test personnel when accomplishing the testing or examinations prescribed in the ASME BPV or OM Codes can be an important factor in determining whether, or under what conditions, a test or examination must be performed. The licensee must submit for NRC staff approval such a request for an alternative in the manner described above as a case of hardship because of radiation exposure.

Some of the radiation considerations will only be known at the time of the examinations or tests. However, based on experience at operating facilities, the licensee generally is aware of those areas for which relief or an alternative may be necessary. In addition to the general requirements given above, the licensee should submit the following additional information about the relief or alternative request:

- The total estimated person-rem (roentgen equivalent man) exposure involved in the test or examination after as low as reasonably achievable aspects are factored into the planning of the job;
- The radiation levels at the test or examination area and the time and number of personnel who will be required in this area;
- Flushing or shielding capabilities that might reduce radiation levels;
- A discussion of the considerations involved in remote inspections; and
- The amount of worker radiation exposure that resulted from any previous ISI for the component weld examinations for which the relief or alternative is being requested.

The Timing of Alternatives Submitted in Accordance With 10 CFR 50.55a(a)(3)

10 CFR 50.55a(a)(3) states:

> Proposed alternatives to the requirements of paragraphs (c), (d), (e), (f), (g), and (h) of this section, or portions thereof, may be used when authorized by the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of New Reactors, as appropriate. Any proposed alternatives must be submitted and authorized prior to implementation.

As required by 10 CFR 50.55a(a)(3), licensees and applicants must submit proposed alternatives to the NRC and obtain NRC authorization *before implementing the alternatives.* For operating nuclear power plants, the licensee must submit the alternative request to allow the NRC staff ample time (generally less than 1 year) to review and prepare a safety evaluation before performing an alternative examination, pressure test, or operational readiness test. This is particularly important when the licensee plans to use the proposed alternative to justify the use of a different examination or test or to demonstrate compliance of a particular component with the ASME BPV or OM Code requirements in support of facility restart from an otherwise safe-plant configuration (i.e., shutdown condition). Alternative examination techniques or tests may be demonstrated in the field for the feasibility of the proposed alternative. NRC authorization of alternatives should be factored into the planning schedule as follows: (1) for design modifications and physical modifications to the plant, prior to reliance on the components associated with the alternative to be available to perform their safety function, (2) for tests, prior to performing the alternative test, and (3) for examinations, prior to crediting the alternative examination to satisfy an ASME Code or 10 CFR 50.55a requirement.

For nuclear power plants that have not started initial operation, applicants or licensees may request authorization of alternatives either during the design stage (e.g., as part of the construction permit, design certification or COL application review) or during the construction stage (e.g., after the construction permit or COL is issued, but prior to plant operation). If an alternative is submitted during the construction stage, it must be authorized by the NRC before the components associated with the alternative are installed in the plant and the ASME Data Report is completed and the Code Symbol Stamp (or Certification Mark) is applied to the associated system. Although applicants and licensees may submit an alternative for authorization after the associated components are fabricated, those applicants and licensees will be proceeding at the risk of the NRC subsequently denying the requested alternative. Combined license holders should also be cautious that the proposed alternative does not adversely impact the successful closure of applicable inspections, tests, analyses and acceptance criteria (ITAAC) in plants licensed under 10 CFR Part 52. Thus, alternatives should be submitted to the NRC for authorization as early as practicable to avoid impacting final closure of ITAAC, causing potential hardware changes or affecting scheduled plant start-up.

The submittal of alternatives after they were implemented (e.g., within or after 12 months after the end of an inspection interval or after the plant starts or resumes operation) will be evaluated by the NRC staff in accordance with the applicable provision of 10 CFR 50.55a. In addition, they will be forwarded to the appropriate NRC regional office for enforcement consideration to determine whether such action complied with the requirements of 10 CFR 50.55a(a)(3).

The Timing of Relief Requests Submitted in Accordance With 10 CFR 50.55a(g)(5) or 10 CFR 50.55a(f)(5)

Regulations in 10 CFR 50.55a(f)(5)(iii) and (g)(5)(iii) require a nuclear power plant licensee to notify the NRC when it has determined that conformance with certain ASME Code requirements related to the IST and ISI programs, respectively, are impractical for its facility, and to submit information to support its determination. The regulations in 10 CFR 50.55a(f)(5)(iv) and (g)(5)(iv) provide requirements for the timeliness of demonstrating the impracticality of ASME Code requirements related to the IST and ISI programs, respectively, for each new 120-month test/inspection interval. These requirements state that licensees must demonstrate to the satisfaction of the NRC the basis for determining that the test/examination was impractical not later than 12 months following the end of that interval in which the test/examination was attempted. Sections 50.55a(f)(6)(i) and (g)(6)(i) state that the NRC will evaluate determinations that ASME Code requirements for IST and ISI programs, respectively, are impractical, and may grant relief and impose such alternative requirements as it determines is authorized by law and that will not endanger life or property or the common defense and security. Such exceptions must be deemed to be in the public interest, giving due consideration to the burden upon the licensee that could result if the requirements were imposed on the facility.

Therefore, licensees should submit requests for relief due to impracticality under 10 CFR 50.55a(g)(5)(iii) for a given 120-month inspection interval after the test or exam has been attempted during that period and prior to 12 months following the termination of that interval. Licensees should not submit requests for relief either before or after this time interval. Requests submitted prior to the acceptable time frame will not be accepted by the NRC staff for review. Requests submitted after the acceptable timeframe will be evaluated by the staff for safety issues but will not be approved. These requests will be forwarded to the appropriate regional office for potential enforcement action.

Requests for relief under 10 CFR 50.55a(f)(5)(iii) related to IST are not subject to the restriction for submittals under 10 CFR 50.55a(g)(5)(iii). However, the NRC staff recommends that

licensees and applicants consider the guidance discussed in this RIS regarding the timeliness of submittal of alternative requests when planning their submittal of IST relief requests.

Backfit Discussion

This RIS requires no action or written response and is therefore, not a backfit under 10 CFR 50.109, ''Backfitting.'' Consequently, the staff did not perform a backfit analysis.

***Federal Register** Notification*

[Discussion to be provided in final RIS.]

Congressional Review Act

[Discussion to be provided in final RIS.]

Paperwork Reduction Act Statement

This RIS references information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Office of Management and Budget (OMB) approved the existing requirements under OMB approval number 3150–0011.

Public Protection Notification

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

Dated at Rockville, Maryland, this 22nd day of August 2012.

For the Nuclear Regulatory Commission.

David L. Pelton,

Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–21541 Filed 9–5–12; 8:45 am]

BILLING CODE 7590–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0028]

RIN 3170–AA19

Integrated Mortgage Disclosures Under the Real Estate Settlement Procedure Act (Regulation X) and the Truth In Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of request for public comment; extension of comment period.

SUMMARY: On July 9, 2012, the Consumer Financial Protection Bureau (Bureau) published on its Web site and transmitted to the **Federal Register** a notice requesting comment on proposed rules and forms to integrate certain disclosure requirements of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) for most closed-end consumer credit transactions secured by real property, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed rule, which would amend Regulation X (RESPA) and Regulation Z (TILA), was published in the **Federal Register** on August 23, 2012. *See* 77 FR 51116 (Aug. 23, 2012). Comments on the integrated rules and forms are due November 6, 2012. However, the proposed rule set a comment deadline of September 7, 2012 on two issues: Proposed changes to the definition of the finance charge; and whether to delay implementation of certain disclosure requirements added to TILA and RESPA by title XIV of the Dodd-Frank Act. Because of the relationship of the proposed changes to other ongoing Bureau rulemakings and the Bureau's request for data on the potential impact of the proposed changes to the finance charge on those rulemakings, the Bureau has determined that an extension of the comment period until November 6, 2012 is appropriate. This extension applies solely to the proposed changes to the definition of the finance charge.

DATES: The comment period for the proposed amendments to 12 CFR 1026.4 contained in the Bureau's notice at 77 FR 51116 (Aug. 23, 2012) is extended to November 6, 2012. The comment period for the proposed changes to 12 CFR 1026.1(c) contained in that notice, which ends on September 7, 2012, is unchanged. The comment period for all other proposed amendments in that notice, which ends on November 6, 2012, is unchanged.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0028 or RIN 3170–AA19, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street, NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Priscilla Walton-Fein, Counsel, or Paul Mondor, Managing Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION: On July 9, 2012, the Consumer Financial Protection Bureau (Bureau) published on its Web site and transmitted to the **Federal Register** a notice requesting comment on proposed rules and forms to integrate certain disclosure requirements of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) for most closed-end consumer credit transactions secured by real property (TILA-RESPA Integration Proposal), as required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed rule would amend Regulation X (RESPA) and Regulation Z (TILA). The notice was published in the **Federal Register** on August 23, 2012.[1] In addition to requesting comment on the integrated rules and forms, the TILA-RESPA Integration Proposal requests comment on other amendments to Regulation Z, including proposed provisions to delay implementation of certain disclosure requirements added to TILA and RESPA by title XIV of the Dodd-Frank Act (in proposed § 1026.1(c)) and proposed changes to the definition of the finance charge (in proposed § 1026.4).

Under proposed § 1026.4, most of the current exclusions from the finance charge would be eliminated for closed-end transactions secured by real property or a dwelling, resulting in a simpler, more inclusive definition of the

[1] 77 FR 51116 (Aug. 23, 2012). The version of the TILA-RESPA Integration Proposal published in the **Federal Register** on August 23, 2012 is identical to the version of the proposed rule published on the Bureau's Web site on July 9, 2012, except for limited formatting and typographical changes.

finance charge. This aspect of the TILA-RESPA Integration Proposal largely mirrors a 2009 proposed rule published by the Board of Governors of the Federal Reserve System (Board), which was not finalized before TILA rulemaking authority transferred to the Bureau (2009 Closed-End Proposal).[2]

The TILA-RESPA Integration Proposal provides for a bifurcated comment process. Comments regarding the proposed amendments to §§ 1026.1(c) and 1026.4 must be received on or before September 7, 2012. For all other proposed amendments, comments must be received on or before November 6, 2012.

The TILA-RESPA Integration Proposal describes the rationale for a bifurcated comment process. With respect to the proposed changes to the definition of the finance charge, the proposed rule notes that the Bureau expects to issue several final rules to implement provisions of title XIV of the Dodd-Frank Act by January 21, 2013, that address loan pricing thresholds for coverage of various substantive requirements under the Home Ownership and Equity Protection Act (HOEPA) and other Dodd-Frank Act provisions that are based, at least in part, on the finance charge and corresponding annual percentage rate (APR).[3] Accordingly, the Bureau wished to evaluate comments on the expanded definition of the finance charge simultaneously with comments on the other proposed rules, and therefore provided a comment period of 60 days for the proposed amendments to § 1026.4, rather than the 120-day comment period provided for most other aspects of the proposed rule. The Bureau also believed a shorter comment period would be appropriate for the proposed changes to the finance charge definition given that this aspect of the proposal largely mirrors the 2009 Closed-End Proposal. The Bureau also sought comment on the timing of implementation of the proposed changes to the finance charge definition in light of the Bureau's other rulemakings.

Based on informal feedback received by the Bureau since publishing the TILA-RESPA Integration Proposal, the Bureau now believes that it is appropriate to provide additional time for commenters to provide their views on the proposed changes to the definition of the finance charge. The Bureau recently published proposed rules related to HOEPA protections and mandatory appraisals for certain higher-risk mortgages; those proposals discuss certain means of reconciling an expanded definition of the finance charge with coverage thresholds that depend on the finance charge or APR. The Bureau understands that commenters may need additional time to evaluate the proposed more inclusive finance charge in light of these proposals, as well as prior proposed rules published by the Board related to qualified mortgages and mandatory escrow accounts that discuss similar issues. In particular, the TILA-RESPA Integration Proposal specifically requests data that will allow the Bureau to perform a quantitative analysis to determine the impacts of a broader finance charge definition on the coverage thresholds for these other regimes. The Bureau understands that such data collection may require additional time and that commenters may wish to evaluate any data they collect when preparing their comments.

For these reasons, the Bureau is extending the comment period for the proposed changes to § 1026.4 in the TILA-RESPA Integration Proposal to November 6, 2012. In light of this extended comment period and the subsequent, necessary analysis of comments and data received, the Bureau does not expect to address any proposed changes to § 1026.4 until after the Bureau has met its deadlines to issue final rules to implement requirements of the Dodd-Frank Act that would otherwise take effect on January 21, 2013. Instead, the Bureau expects to address the proposals to expand the finance charge when it finalizes the disclosures in the TILA-RESPA Integration Proposal.

The comment period for the proposed changes to § 1026.1(c) concerning certain disclosure requirements under the Dodd-Frank Act, which ends September 7, 2012, is unchanged. In addition, the comment period for all other aspects of the TILA-RESPA Integration Proposal containing proposed amendments, which ends November 6, 2012, is unchanged. In a separate notice, the Bureau is also extending to November 6, 2012, the comment period for the portions of the Bureau's HOEPA Proposal regarding whether and how to account for the implications of a more inclusive finance charge on the scope of HOEPA coverage. If the Bureau expands the definition of the finance charge, the Bureau will at the same time address the proposals to adjust the coverage thresholds that depend on the finance charge or the APR in the HOEPA Proposal and the other proposed rules implementing title XIV of the Dodd-Frank Act. The Bureau continues to encourage commenters to submit comments during the relevant comment periods.

Dated: August 30, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–22000 Filed 9–5–12; 8:45 am]

BILLING CODE 4810–AM–P

[2] 74 FR 43232 (Aug. 26, 2009).

[3] Generally, these other rulemakings are as follows: (1) Expanded protections for high-cost mortgage loans under HOEPA pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (see proposed rule at 77 FR 49089 (Aug. 15, 2012)); (2) requirements for creditors to determine that a consumer can repay a mortgage loan and the establishment of minimum standards for compliance, such as by making a ''qualified mortgage,'' pursuant to TILA section 129C, as established by Dodd-Frank Act sections 1411 and 1412 (see proposed rule at 76 FR 27390 (May 11, 2011)); (3) required escrow account disclosures and mandatory escrow accounts for certain first-lien higher-priced mortgage loans pursuant to TILA section 129D, as established by Dodd-Frank Act sections 1461 and 1462 (see proposed rule at 76 FR 11598 (Mar. 2, 2011)); and (4) required appraisals for higher-risk mortgages pursuant to TILA section 129H, as established by Dodd-Frank Act section 1471 (see proposed rule at *https://s3.amazonaws.com/public-inspection.federalregister.gov/2012-20432.pdf;* **Federal Register** publication scheduled for September 5, 2012). The TILA-RESPA Integration Proposal explains in detail the intersection of the proposed more inclusive finance charge and these other rulemakings. *See* 77 FR 51116, 51144–46.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0029]

RIN 3170–AA12

High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of request for public comment; extension of comment period.

SUMMARY: On July 9, 2012, the Consumer Financial Protection Bureau (Bureau) published on its Web site and transmitted to the **Federal Register** a notice requesting comment on, among other things, proposed changes to Regulation Z (Truth in Lending) to implement amendments to the Truth in Lending Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act that expand the types of mortgage loans that are subject to the protections of the Home Ownership and

Equity Protection Act of 1994 (HOEPA) (the HOEPA Proposal). The proposed rule was published in the **Federal Register** on August 15, 2012. *See* 77 FR 49089 (Aug. 15, 2012). The proposed rule set a comment deadline of September 7, 2012. In a separate rulemaking published on the Bureau's Web site on July 9, 2012 and published in the **Federal Register** on August 23, 2012 (*see* 77 FR 51116 (Aug. 23, 2012)), the Bureau proposed changes to the definition of the finance charge, which would result in a simpler, more inclusive definition of the finance charge (TILA-RESPA Integration Proposal). In light of these proposed changes, the HOEPA Proposal seeks comment on whether and how to account for the implications of a more inclusive finance charge on the scope of HOEPA coverage. Although the TILA-RESPA Integration Proposal set an initial comment deadline regarding the proposed changes to the finance charge definition of September 7, 2012, by separate notice, the Bureau is extending that deadline to November 6, 2012. For the same reasons discussed in that notice, the Bureau has determined that an extension of the comment period until November 6, 2012 for the portion of the HOEPA Proposal regarding whether and how to account for the implications of a more inclusive finance charge on the scope of HOEPA coverage is appropriate. This extension does not apply to any other aspect of the HOEPA Proposal.

DATES: The comment period for whether and how to account for the implications of a more inclusive finance charge on the scope of HOEPA coverage, *see* proposed § 1026.32(a)(1)(i) and (b)(1)(i), is extended to November 6, 2012. The comment period for all other proposed amendments in that notice, which ends on September 7, 2012, is unchanged.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0028 or RIN 3170–AA19, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street, NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security Numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Priscilla Walton-Fein, Counsel, or Paul Mondor, Managing Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION: On July 9, 2012, the Consumer Financial Protection Bureau (Bureau) published on its Web site and transmitted to the **Federal Register** a notice requesting comment on, among other things, proposed changes to Regulation Z (Truth in Lending) to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act that expand the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protection Act of 1994 (HOEPA) (the HOEPA Proposal). The proposed rule was published in the **Federal Register** on August 15, 2012. *See* 77 FR 49089 (Aug. 15, 2012). The proposed rule set a comment deadline of September 7, 2012.[1]

In a separate rulemaking published on the Bureau's Web site on July 9, 2012 and published in the **Federal Register** on August 23, 2012 (77 FR 51116 (Aug. 23, 2012)), the Bureau proposed changes to the definition of the finance charge, which would result in a simpler, more inclusive definition of the finance charge (the TILA-RESPA Integration Proposal). Although the proposed changes to the definition of the finance charge were proposed in this separate rulemaking, the HOEPA Proposal seeks comment on whether and how to account for the implications of a more inclusive finance charge on the scope of HOEPA coverage, if the more inclusive finance charge is adopted. In particular, the HOEPA Proposal seeks comment and data on potential modifications to HOEPA's annual percentage rate (APR) coverage threshold (proposed § 1026.32(a)) and points and fees threshold (proposed § 1026.32(b)) to account for an expanded finance charge, and also seeks comment on the timing of implementation for any change to the definition of finance charge and any related change to the HOEPA APR and points and fees thresholds.

The TILA-RESPA Integration Proposal set an initial comment deadline regarding the proposed changes to the definition of the finance charge of September 7, 2012. This comment period was based in part on the Bureau's desire to evaluate comments on the expanded definition of the finance charge simultaneously with comments on the other proposed rules, including the HOEPA Proposal, that address loan pricing thresholds for coverage of various substantive requirements that are based on the finance charge and corresponding APR. However, by separate notice, the Bureau is extending that comment deadline to November 6, 2012. For the same reasons discussed in that notice, the Bureau has determined that it is appropriate to extend the comment period regarding whether and how to account for the implications of a more inclusive finance charge on the scope of HOEPA coverage until November 6, 2012. The comment period for all other proposed amendments in the HOEPA Proposal, which ends September 7, 2012, is unchanged.

In light of the extended comment periods and the subsequent, necessary analysis of comments and data received, the Bureau does not expect to address any proposed changes to the definition of the finance charge or the related portions of the HOEPA Proposal until after the Bureau has met its deadlines to issue final rules to implement requirements of the Dodd-Frank Act that would otherwise take effect on January 21, 2013. Instead, the Bureau expects to address the proposal to expand the finance charge when it finalizes the disclosures in the TILA-RESPA Integration Proposal. If the Bureau expands the definition of the finance charge, the Bureau will at the same time address the proposals to adjust the coverage thresholds that depend on the finance charge or the APR in the HOEPA Proposal and the other proposed rules implementing title XIV of the Dodd-Frank Act.

The comment period for all other aspects of the HOEPA Proposal, which ends September 7, 2012, is unchanged. The Bureau continues to encourage commenters to submit comments during the relevant comment periods.

[1] Comments on the Paperwork Reduction Act (PRA) analysis are due October 15, 2012.

Dated: August 31, 2012.

Meredith Fuchs,

General Counsel, Bureau of Consumer Financial Protection.

[FR Doc. 2012–21998 Filed 9–5–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0930; Directorate Identifier 2011–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes. This proposed AD was prompted by reports of failure of a screw cap or end cap of the auxiliary hydraulic system accumulator while on the ground, which resulted in loss of use of that hydraulic system and high-energy impact damage to adjacent systems and structures. This proposed AD would require inspecting for the correct serial number of a certain hydraulic system accumulator, and replacing affected hydraulic system accumulators with new or serviceable accumulators. We are proposing this AD to prevent failure of a screw cap or end cap and loss of the related hydraulic system, which could result in damage to airplane structure and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 22, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0930; Directorate Identifier 2011–NM–251–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–41, dated October 31, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes, resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. To date, the lowest number of flight cycles accumulated at the time of failure has been 6991.
>
> Although there have been no failures to date on any BD–100–1A10 aeroplanes, accumulators similar to those installed on the CL–600–2B19 are installed on them. The affected part numbers (P/Ns) of the accumulators installed on BD–100–1A10 are 900095–1 (Auxiliary Hydraulic System accumulator), 08–60219–001 (Inboard Brake accumulator), and 08–60218–001 (Outboard Brake accumulator).
>
> A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for the accumulator has been conducted, resulting in the identification of areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.
>
> This [TCCA] directive provides the initial action by mandating the replacement of the Auxiliary Hydraulic System accumulators that are not identified by the letter ''E'' after the serial number on the identification plate. Further corrective actions are anticipated to rectify similar safety concerns with the Inboard and Outboard Brake accumulators.

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

Relevant Service Information

Bombardier has issued Service Bulletin 100–29–14, dated December 16, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD would affect 75 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection to determine part numbers	1 work-hour × $85 per hour = $85	$0	$85	$6,375

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Hydraulic accumulator replacement	4 work-hours × $85 per hour = $340	$0	$340

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0930; Directorate Identifier 2011–NM–251–AD.

(a) Comments Due Date

We must receive comments by October 22, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category, having serial numbers 20003 through 20335 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Reason

This AD was prompted by reports of failure of a screw-cap or end cap of the auxiliary hydraulic system accumulator while on the ground, which resulted in loss of use of that hydraulic system and high-energy impact damage to adjacent systems and structures. We are issuing this AD to prevent failure of a screw cap or end cap and loss of the related hydraulic system, which could result in damage to airplane structure and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection

At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Inspect the identification plate on the hydraulic system accumulator having part number (P/N) 900095–1 to determine if an ''E'' is part of the suffix of the serial number stamped on the identification plate, as listed in paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 100–29–14, dated December 16, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the suffix of the serial number can be conclusively determined from that review.

(1) For an accumulator that has accumulated more than 3,150 total flight cycles as of the effective date of this AD, inspect that accumulator within 350 flight cycles after the effective date of this AD.

(2) For an accumulator that has accumulated 3,150 or fewer total flight cycles as of the effective date of this AD, inspect that accumulator before it has accumulated 3,500 total flight cycles.

(3) For an accumulator on which it is not possible to determine the total flight cycles accumulated as of the effective date of this AD, inspect that accumulator within 350 flight cycles after the effective date of this AD.

(h) Replacement

If, during the inspection required by paragraph (g) of this AD, any accumulator having P/N 900095–1 is found on which the letter ''E'' is not part of the suffix of the serial number on the identification plate: Before further flight, replace the accumulator with a new or serviceable accumulator, in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 100–29–14, dated December 16, 2010.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane a hydraulic system accumulator having P/N 900095–1, on which the letter ''E'' is not part of the suffix of the serial number on the identification plate.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2011–41, dated October 31, 2011; and Bombardier Service Bulletin 100–29–14, dated December 16, 2010; for related information.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 24, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21946 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0863; Directorate Identifier 2012–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by a review of the tail strobe light installation, which revealed that the tail strobe light is not electrically bonded to primary structure of the airplane. This proposed AD would require installing a new tail strobe light housing and a new disconnect bracket, and changing the wire bundles. We are proposing this AD, in case of a direct lightning strike to the tail strobe light, to prevent damage to the operation of other critical airplane systems due to electromagnetic coupling and large transient voltages, and damage to the control mechanisms or surfaces due to a fire, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by October 22, 2012.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, FAA, ANM–130S, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6418; fax: (425) 917–6590; email: *marie.hogestad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0863; Directorate Identifier 2012–NM–108–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

As a result of a review of the tail strobe light installation, located at the aft end of section 48, it was determined that the tail strobe light is not electrically bonded to primary structure of the airplane. In case of a direct lightning strike to the tail strobe light, electromagnetic coupling and large transient voltages can be transmitted into the pressure vessel and couple to wires of the airplane systems that are routed with the tail strobe light wires. The large transient voltages could cause

damage to the operation of the airplane's electrical systems, as well as flight control and avionics equipment. In addition to electromagnetic coupling, since the tail strobe light is located in a flammable leakage zone, electrical current on the tail strobe light system wiring could create an ignition source and potential fire, which could cause damage to the control mechanisms or surfaces. This condition, if not corrected, could result in loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 737–33–1146, dated November 2, 2011 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes); and Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012 (for Model (for Model 737–300, –400, and –500 series airplanes). The service information describes procedures for installing a new tail strobe light housing, installing a new disconnect bracket, and changing the wire bundles.

Concurrent Service Information

Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012, also specifies the concurrent accomplishment of the following service bulletins:

- Boeing Service Bulletin 737–33–1076, dated September 22, 1988.
- Boeing Service Bulletin 737–33–1078, dated November 3, 1988.
- Boeing Service Bulletin 737–33–1111, dated August 29, 1996.

These service bulletins describe procedures for installing wingtips and tail strobe lights.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 1,512 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation for Model 737–300, –400, and –500 series airplanes (478 U.S. registered airplanes).	Up to 33 work-hours × $85 per hour = Up to $2,805.	Up to $14,886	Up to $17,691	Up to $8,456,298.
Installation for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Group 1 (922 U.S. registered airplanes).	Up to 18 work-hours × $85 per hour = Up to $1,530.	Up to $4,422	Up to $5,952	Up to $5,487,744.
Installation for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Group 2 (85 U.S. registered airplanes).	Up to 18 work-hours × $85 per hour = Up to $1,530.	Up to $2,818	Up to $4,348	Up to $369,580.
Installation for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Group 3 (27 U.S. registered airplanes).	Up to 21 work-hours × $85 per hour = Up to $1,785.	Up to $4,478	Up to $6,263	Up to $169,101.

According to the manufacturer, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0863; Directorate Identifier 2012–NM–108–AD.

(a) Comments Due Date

We must receive comments by October 22, 2012.

(b) Affected ADs

None.

(c) Applicability

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

(1) Model 737–300, –400, and –500 series airplanes, as identified in Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012.

(2) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, as identified in Boeing Special Attention Service Bulletin 737–33–1146, dated November 2, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 33, Lights.

(e) Unsafe Condition

This AD was prompted by a review of the tail strobe light installation, which revealed the tail strobe light is not electrically bonded to primary structure of the airplane. We are issuing this AD, in case of a direct lightning strike to the tail strobe light, to prevent damage to the operation of other critical airplane systems due to electromagnetic coupling and large transient voltages, and damage to the control mechanisms or surfaces due to a fire, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Installation

Within 72 months after the effective date of this AD, install a new tail strobe light housing, install a new disconnect bracket, and change the wire bundles, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–33–1146, dated November 2, 2011 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes), except as provided by paragraph (i) of this AD; or Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012 (for Model 737–300, –400, and –500 series airplanes).

(h) Concurrent Installation

For airplanes identified in Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012: Prior to or concurrently with the actions required by paragraph (g) of this AD, install wingtips and tail strobe lights, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD:

(1) For Group 6 airplanes identified in Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012: Use Boeing Service Bulletin 737–33–1076, dated September 22, 1988.

(2) For Group 7 airplanes identified in Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012: Use Boeing Service Bulletin 737–33–1078, dated November 3, 1988.

(3) For Group 5 airplanes identified in Boeing Special Attention Service Bulletin 737–33–1149, dated April 13, 2012: Use Boeing Service Bulletin 737–33–1111, dated August 29, 1996.

(i) Exception to Service Bulletin Specifications

This paragraph clarifies the airplane groups and configurations identified in Boeing Special Attention Service Bulletin 737–33–1146, dated November 2, 2011. Group 1, Config 1, comprises line number (L/N) 1–1198 inclusive. Group 1, Config 2, comprises L/N 1199–3060 inclusive.

(j) 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.

(k) Related Information

(1) For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, FAA, ANM–130S, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6418; fax: (425) 917–6590; email: *marie.hogestad@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 24, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21928 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0864; Directorate Identifier 2011–NM–023–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 767 airplanes. The existing AD currently requires sealing certain fasteners and stiffeners in the fuel tank, changing certain wire bundle clamp configurations on the fuel tank walls, inspecting certain fasteners in the fuel tanks and determining the method of attachment of the vortex generators, and performing corrective action if necessary. We issued that AD to prevent possible ignition sources in the auxiliary (center) fuel tank, main fuel tanks, and surge tanks caused by a wiring short or lightning strike, which could result in fuel tank explosions and consequent loss of the airplane. Since we issued that AD, another possible ignition source location was identified. This proposed AD would add a general visual inspection for the presence of a polytetrafluoroethylene (TFE) sleeve at the clamp location on the rear spar, and installation of a TFE sleeve if necessary. This proposed AD would also add airplanes to the applicability. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 22, 2012.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0864; Directorate Identifier 2011–NM–023–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 7, 2009, we issued AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), for certain Model 767–200, –300, –300F, and –400ER series airplanes. That AD requires sealing certain fasteners and stiffeners in the fuel tank, changing certain wire bundle clamp configurations on the fuel tank walls, inspecting certain fasteners in the fuel tanks and determining the method of attachment of the vortex generators, and corrective action if necessary. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to prevent possible ignition sources in the auxiliary (center) fuel tank, main fuel tanks, and surge tanks caused by a wiring short or lightning strike, which could result in fuel tank explosions and consequent loss of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), another possible ignition source location was identified that could also result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), refers to Boeing Service Bulletin 767–57A0102, Revision 01, dated November 27, 2007, as the appropriate source of service information for installing the wire bundle sleeve and clamp and applying fastener sealant. Boeing has since revised this service bulletin. We have reviewed Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011, which includes the following changes (introduced in Boeing Service Bulletin 767–57A0102, Revision 3, dated December 2, 2010): the addition of work package 13, which includes a general visual inspection of the clamp location on the rear spar to determine whether a polytetrafluoroethylene (TFE) sleeve is installed between the clamp and the plastic convoluted tubing, and the installation of a TFE sleeve between the clamp and the plastic convoluted tubing, if necessary. Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011, also adds airplanes to the effectivity.

AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), refers to Boeing Service Bulletin 767–57A0100, Revision 01, dated June 19, 2008, as the appropriate source of service information for sealing certain bracket fasteners and rear spar stiffeners, and inspecting the vortex generator attachment. Boeing has since revised this service bulletin. We have reviewed Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011, which adds clarifications, but no new actions.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009). This proposed AD would revise the applicability to include additional airplanes. This proposed AD would also add a general visual inspection for the presence of a TFE sleeve at the clamp location on the rear spar, and installation of a TFE sleeve if necessary.

Change to Existing AD

This proposed AD would retain all requirements of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009). Since AD 2009–18–02 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement/information in AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g).
paragraph (g)	paragraph (h).
Note 1	paragraph (i).

Other Changes

We have revised certain headings throughout this AD.

Costs of Compliance

We estimate that this proposed AD affects 414 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S.-registered airplanes	Cost on U.S. operators
Group 1—Seal ends of fasteners—Boeing Service Bulletin 767–57A0100 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	6 work-hours × $85 per hour = $510.	$0	$510	367	$187,170
Group 2—Seal ends of fasteners—Boeing Service Bulletin 767–57A0100 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	114 work-hours × $85 per hour = $9,690.	0	9,690	37	358,530
Group 3—Inspection—Boeing Service Bulletin 767–57A0100 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	1 work-hour × $85 per hour = $85.	0	85	9	765
Group 1—Change wire bundle clamp configurations, Boeing Service Bulletin 767–57A0102 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	250 work-hours × $85 per hour = $21,250.	1,632	22,882	376	8,603,632
Group 2—Change wire bundle clamp configurations, Boeing Service Bulletin 767–57A0102 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	874 work-hours × $85 per hour = $74,290.	1,304	75,594	37	2,796,978
Group 3—Change wire bundle clamp configuration and seal fasteners, Boeing Service Bulletin 767–57A0102 (retained actions from AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	26 work-hours × $85 per hour = $2,210.	338	2,548	1	2,548
All airplanes—Inspection (new proposed action)	1 work-hour × $85 per hour = $85.	0	85	414	35,190

We estimate the following costs to do any necessary repair that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Seal ends of fasteners—Boeing Service Bulletin 767–57A0100 (retained actions from AD 2009-18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009)).	6 work-hours × $85 per hour = $510	$0	Up to $510.
Installation of TFE sleeve—Boeing Service Bulletin 767–57A0102	1 work-hour × $85 per hour = $85 ...	0	$85.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0864; Directorate Identifier 2011–NM–023–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by October 22, 2012.

(b) Affected ADs

This AD supersedes AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009).

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; as identified in Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011; and Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible ignition sources in the auxiliary (center) fuel tank, main fuel tanks, and surge tanks caused by a wiring short or lightning strike, which could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Fastener Sealant Application

This paragraph restates the requirements of paragraph (f) of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), with revised service information. For airplanes identified in Boeing Service Bulletin 767–57A0100, Revision 1, dated June 19, 2008: Within 60 months after October 1, 2009 (the effective date of AD 2009–18–02), do the actions in paragraphs (g)(1) and (g)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0100, Revision 01, dated June 19, 2008; or Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–57A0100, Revision 3, dated July 28, 2011, may be used to accomplish the requirements of this paragraph.

(1) For Groups 1 and 2 airplanes: Seal the ends of the fasteners on the brackets that hold the vortex generators, and seal the ends of the fasteners on certain stiffeners on the rear spar, as applicable.

(2) For Group 3 airplanes: Do a detailed inspection to determine the method of attachment of the vortex generators and, before further flight, do all applicable specified corrective actions.

(h) Retained Wire Bundle Sleeve and Clamp Installation and Fastener Sealant Application for Currently Affected Airplanes

This paragraph restates the requirements of paragraph (g) of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), with revised service information. For airplanes identified in Boeing Service Bulletin 767–57A0102, Revision 01, dated November 27, 2007: Within 60 months after October 1, 2009 (the effective date of AD 2009–18–02), do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0102, Revision 01, dated November 27, 2007; or Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011, may be used to accomplish the actions required by this paragraph.

(1) Change the wire bundle clamp configurations at specified locations on the fuel tank walls.

(2) Seal the fasteners and certain stiffeners at specified locations in the fuel tank.

(3) Do a detailed inspection of the sealant of the fasteners in the auxiliary tank center bay and rib 28 of the left and right main fuel tanks. Seal any unsealed fasteners before further flight.

(i) Definition

This paragraph restates the information specified in Note 1 of AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009). For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(j) New Wire Bundle Sleeve and Clamp Installation and Fastener Sealant Application for Newly Added Airplanes

For airplanes identified in Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011, but not identified in paragraph (h) of this AD: Do the actions required by paragraph (h) of this AD within 60 months after the effective date of this AD.

(k) New Inspection and Sleeve Installation

For airplanes identified as Groups 1 and 2 in Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011: Within 60 months after the effective date of this AD, do a general visual inspection of the clamp location on the rear spar to determine whether a polytetrafluoroethylene (TFE) sleeve is installed between the clamp and the plastic convoluted tube, in accordance with Work Package 13 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011.

(1) If a TFE sleeve is not installed between the clamp and the plastic convoluted tubing, before further flight, install a TFE sleeve, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0102, Revision 4, dated September 20, 2011.

(2) If a TFE sleeve is installed between the clamp and the plastic convoluted tubing, no more work is required by this paragraph.

(l) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–57A0100, dated August 21, 2006; Revision 1, dated June 19, 2008; or Revision 2, dated May 20, 2010.

(2) This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–57A0102, Revision 01, dated November 27, 2007; Revision 2, dated January 7, 2010; or Revision 3, dated December 2, 2010.

(m) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2009–18–02, Amendment 39–15998 (74 FR 43621, August 27, 2009), are approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

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

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

Issued in Renton, Washington, on August 24, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21931 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0862; Directorate Identifier 2011–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 747–400 and 747–400F series airplanes. The existing AD currently requires installing drains and drain tubes to eliminate water accumulation in the dripshield above the M826 cardfile in the main equipment center. Since we issued that AD, we received reports of continued water damage to diode fire card 285U0072–1 in the M826 automatic fire overheat logic test system cardfile following a false FWD CARGO FIRE message, with no change in frequency, which resulted in an air turn back. This proposed AD would instead require installing drain tubes, relocating wire bundle routing, installing a new drip shield and drip shield deflectors, and replacing insulation blankets. For certain airplanes, this proposed AD would also concurrently require sealing the drain slot, installing spuds, and installing drain tubes. We are proposing this AD to prevent water from exiting over the edge of the existing drip shield and contaminating electrical components in the M826 cardfile, which could result in an electrical short and potential loss of several functions essential for safe flight.

DATES: We must receive comments on this proposed AD by October 22, 2012.

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

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

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 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Control Systems, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0862; Directorate Identifier 2011–NM–198–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On April 7, 2008, we issued AD 2008–08–25, Amendment 39–15479 (73 FR 21240, April 21, 2008), for certain Boeing Model 747–400F and –400 series airplanes. That AD requires installing drains and drain tubes to eliminate water accumulation in the dripshield above the M826 cardfile in the main equipment center. That AD resulted from a report that water from the dripshield entered the card file and damaged a circuit card, causing the AFT CARGO FIRE MSG message to be illuminated, and resulting in an air turn back. We issued that AD to prevent water from entering the card file and damaging a circuit card. Failure of one or more of the 15 fuel system circuit cards in the card file could cause loss of fuel management, which could cause unavailability of fuel. Failure of one or more of the 35 fire detection circuit cards could cause a false message of a fire, or no message of a fire when there is a fire.

Actions Since Existing AD Was Issued

Since we issued AD 2008–08–25, Amendment 39–15479 (73 FR 21240, April 21, 2008), we received reports of continued water damage to diode fire card 285U0072–1 in the M826 automatic fire overheat logic test system cardfile following a false FWD CARGO FIRE message, with no change in frequency, which resulted in an air turn back. These events occurred on airplanes on which the actions required by AD 2008–08–25 had already been accomplished.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–25A3580, Revision 1, dated July 14, 2011 (for Model 747–400F series airplanes); and Boeing Alert Service Bulletin 747–25A3581, Revision 1, dated June 30, 2011 (for Model 747–400 series airplanes). The service information describes procedures for installing drain tubes, relocating wire bundle routing, installing a new drip shield and drip shield deflectors, and replacing insulation blankets.

Concurrent Service Information

Boeing Alert Service Bulletin 747–25A3581, Revision 1, dated June 30, 2011, also specifies the concurrent accomplishment of Boeing Alert Service Bulletin 747–25A3526, Revision 1, dated February 20, 2009 (for Model 747–400 series airplanes). This service bulletin describes procedures for sealing the drain slot, installing spuds, and installing left- and right-side drain tubes.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain none of the requirements of AD 2008–08–25, Amendment 39–15479 (73 FR 21240, April 21, 2008). This proposed AD would require accomplishing the actions specified in the following service bulletins:

- Boeing Alert Service Bulletin 747–25A3580, Revision 1, dated July 14, 2011 (for Model 747–400F series airplanes);
- Boeing Alert Service Bulletin 747–25A3581, Revision 1, dated June 30, 2011 (for Model 747–400 series airplanes); and
- Boeing Alert Service Bulletin 747–25A3526, Revision 1, dated February 20, 2009 (for Model 747–400 series airplanes).

Costs of Compliance

We estimate that this proposed AD affects 38 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation, relocation, and replacement.	Up to 23 work-hours × $85 per hour = $1,955.	$Up to 8,887	Up to $10,842	Up to $411,996.
Concurrent installation	8 work-hours × $85 per hour = 680.	$1,801	$2,481	$94,278.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–08–25, Amendment 39–15479 (73 FR 21240, April 21, 2008), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0862; Directorate Identifier 2011–NM–198–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by October 22, 2012.

(b) Affected ADs

This AD supersedes AD 2008–08–25, Amendment 39–15479 (73 FR 21240, April 21, 2008).

(c) Applicability

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

(1) Model 747–400F series airplanes, as identified in Boeing Alert Service Bulletin 747–25A3580, Revision 1, dated July 14, 2011.

(2) Model 747–400 series airplanes, as identified in Boeing Alert Service Bulletin 747–25A3581, Revision 1, dated June 30, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of continued water damage to diode fire card 285U0072–1 in the M826 automatic fire overheat logic test system cardfile following a false FWD CARGO FIRE message, with no change in frequency, which resulted in an air turn back. We are issuing this AD to prevent water from exiting over the edge of the existing drip shield and contaminating electrical components in the M826 cardfile, which could result in an electrical short and potential loss of several functions essential for safe flight.

(f) Compliance

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

(g) Installation and Replacement

Within 24 months after the effective date of this AD, install aft and forward drain tubes, relocate wire bundle routing, install a new drip shield and drip shield deflectors, and replace insulation blankets, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3580, Revision 1, dated July 14, 2011 (for Model 747–400F series airplanes); or Boeing Alert Service Bulletin 747–25A3581, Revision 1, dated June 30, 2011 (for Model 747–400 series airplanes).

(h) Concurrent Actions

For Group 1 airplanes as identified in Boeing Alert Service Bulletin 747–25A3581, Revision 1, dated June 30, 2011: Prior to or concurrently with the actions required by paragraph (g) of this AD, seal the drain slot, install spuds, and install left- and right-side drain tubes, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3526, Revision 1, dated February 20, 2009 (for Model 747–400 series airplanes), except as specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Steps 1 through 5 of Figure 2 of Boeing Alert Service Bulletin 747–25A3526, Revision 1, dated February 20, 2009, are not required if work is being accomplished concurrently with the actions specified in Boeing Alert Service Bulletin 747–25A3581, Revision 1, dated June 30, 2011 (for Model 747–400 series airplanes).

(2) The portion of ''More Data'' in step 8 of Figure 3 of Boeing Alert Service Bulletin 747–25A3526, Revision 1, dated February 20, 2009, which says ''Attach drain tube and strap above bead on the spud,'' is not required.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Control Systems, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, 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 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 24, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21933 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0931; Directorate Identifier 2011–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. This proposed AD was prompted by a structural re-evaluation by the manufacturer, which identified elements within the wing trailing edge flap area that qualify as structural significant items (SSI). This proposed AD would require revising the maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for certain SSIs, and repairing cracked structure. We are proposing this AD to detect and correct fatigue cracking of the wing trailing edge structure, which could result in compromised structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 22, 2012.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0931; Directorate Identifier 2011–NM–128–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

In the early 1980s, as part of its continuing work to maintain the structural integrity of older transport category airplanes, the FAA concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service objective (DSO). In light of this, and as a result of increased utilization, and longer operational lives, we determined that a supplemental structural inspection program (SSIP) was necessary to maintain the continued structural integrity for all airplanes in the transport fleet.

Since the establishment of the SSI Supplemental Structural Inspection Document (SSID) D6–48040–1, we have received information from the manufacturer, which identified elements within the wing trailing edge flap area, which qualified as SSI. An SSI is defined as a structural part or component that contributes significantly to carry flight, ground, pressure, or control loads, and whose failure could affect the structural integrity necessary for the safety of the airplane, and whose damage tolerance or safe-life characteristics it is necessary, therefore, to establish or confirm. Uncorrected fatigue cracks in these structural elements could result in compromised structural integrity of the airplane.

Issuance of FAA Advisory Circular (AC)

On March 7, 2008, we issued AC 91–56B, ''Continuing Structural Integrity Program for Airplanes,'' (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/list/AC%2091-56B/$FILE/AC%2091-56B.pdf*). That AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to transport airplanes that were certified under the fail-safe requirements of part 4b (''Airplane Airworthiness, Transport Categories'') of the Civil Air Regulations or damage tolerance structural requirements of part 25 (''Airworthiness Standards: Transport Category Airplanes'') of the Federal Aviation Regulations (FARs) (14 CFR part 25), and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in that AC are applicable to transport category airplanes operated under subpart D (''Special Flight Operations'') of part 91 (''General Operating and Flight Rules'') of the FARs (14 CFR part 91); part 121 (''Operating Requirements: Domestic, Flag, and Supplemental Operations'') of the FARs (14 CFR part 121); part 125 (''Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload of 6,000 Pounds or More and Rules Governing Persons Onboard Such Aircraft'') of the FARs (14 CFR part 125); and part 135 (''Operating Requirements: Commuter and On-Demand Operations and Rules Governing Persons On Board Such Aircraft'') of the FARs (14 CFR part 135). The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

Development of the SSIP

In order to evaluate the effect of increased fatigue cracking with respect to maintaining fail-safe design and damage tolerance of the structure of The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, Boeing conducted a structural reassessment of those airplanes, using damage tolerance evaluation techniques. Boeing accomplished this reassessment using the criteria contained in FAA AC 91–56B, dated March 7, 2008, (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/list/AC%2091-56B/$FILE/AC%2091-56B.pdf*), as well as Amendment 25–45, effective December 1, 1978, of section 25.571 (''Damage-tolerance and fatigue evaluation of structure'') of the FARs (14 CFR 25.571). During the reassessment, members of the airline industry participated with Boeing in working group sessions and developed the SSIP for Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. Engineers and maintenance specialists from the FAA also supported these sessions. Subsequently, based on the working group's recommendations, Boeing developed the Supplemental Structural Inspection Document (SSID) D6–48040–1.

Other Related Rulemaking

On May 12, 1998, the FAA issued AD 98–11–03, Amendment 39–10530 (63 FR 27455, May 19, 1999), which is applicable to all The Boeing Company Model 727 series airplanes. On December 30, 1998, the FAA issued AD 98–11–03 R1, Amendment 39–10983 (64 FR 989, January 7, 1999), to revise the maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each SSI, and repair of cracked structure. AD 98–11–03 R1 requires that the maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each SSI, and repair of cracked structure. That action was prompted by a structural re-evaluation by the manufacturer that identified additional structural elements for which, if damage were to occur, supplemental inspections may be required for timely crack detection. The actions required by that AD are intended to ensure the continued structural integrity of The Boeing Company Model 727 fleet.

Relevant Service Information

We reviewed Boeing Document D6–48040–2, Supplemental Structural Inspection Document For Model 727 Airplanes, Appendix A, dated December 2010, which identifies SSIs within the wing trailing edge flap area that need inspection to ensure timely detection of fatigue damage. The inspection requirements identified in Boeing Document D6–48040–2, Appendix A, Supplemental Structural Inspection Document For Model 727 Airplanes, dated December 2010, are intended to be accomplished in conjunction with, not as a replacement for, the existing approved structural inspection program.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require revising the maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each SSI, repetitive inspections to detect cracks in SSIs, and repair of any cracked structure. Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for doing the inspections required by this proposed AD must be established.

Costs of Compliance

We estimate that this proposed AD affects 206 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise maintenance program	1 work-hour × $85 per hour = $85	$0	$85	$17,510

Compliance with this proposed AD would be a method of compliance with the FAA aging airplane safety final rule (AASFR) (70 FR 5518, February 2, 2005) for certain baseline structure of Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. The AASFR final rule requires certain operators to incorporate damage tolerance inspections into their maintenance inspection programs. These requirements are described in paragraph (c)(1) of section 121.1109 of the FARs (14 CFR 121.1109 (c)(1)) and paragraph (b)(1) of section 129.109 of the FARs (14 CFR 129.109(b)(1)). Accomplishment of the actions required by this proposed AD will meet the requirements of these CFR sections for certain baseline structure. The costs for accomplishing the inspection portion of this proposed AD were accounted for in the regulatory evaluation of the AASFR final rule.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0931; Directorate Identifier 2011–NM–128–AD.

(a) Comments Due Date

We must receive comments by October 22, 2012.

(b) Affected ADs

None.

(c) Applicability

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

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections, methods, and compliance times.) Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a structural re-evaluation by the manufacturer, which identified elements within the wing trailing edge flap area that qualify as structural significant items (SSI). We are issuing this AD to detect and correct fatigue cracking of the wing trailing edge structure, which could result in compromised structural integrity of the airplane.

(f) Compliance

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

(g) Revise Maintenance Program

(1) Before the accumulation of 55,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later: Revise the maintenance program to incorporate inspections that provide no less than the required damage tolerance rating (DTR) for each SSI listed in Boeing Document D6–48040–2, Supplemental Structural Inspection Document For Model 727 Airplanes, Appendix A, dated December 2010. The required DTR value for each SSI is identified in Boeing Document D6–48040–2, Supplemental Structural Inspection Document For Model 727 Airplanes, Appendix A, dated December 2010. The revision to the maintenance inspection program must include and must be implemented in accordance with the procedures in Section 3.0 of Boeing Document D6–48040–2, Supplemental Structural Inspection Document For Model 727 Airplanes, Appendix A, dated December 2010; and in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application,'' and Section 6.0, ''SSI Discrepancy Reporting,'' of Boeing Document D6–48040–1, Supplemental Structural Inspection Document (SSID), Volume 1, Revision H, dated June 1994.

(2) The initial compliance time for the inspections is before the accumulation of 55,000 total flight cycles, or within 3,000 flight cycles after 12 months from the

effective date of this AD, whichever occurs later.

(h) Repair

If any cracked structure is found during any inspection specified in Boeing Document D6–48040–2, Supplemental Structural Inspection Document For Model 727 Airplanes, Appendix A, dated December 2010, before further flight, repair the cracked structure using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used other than those specified in Boeing Document D6–48040–2, Supplemental Structural Inspection Document For Model 727 Airplanes, Appendix A, dated December 2010, unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) 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.

(k) Related Information

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, 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.

Issued in Renton, Washington, on August 24, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21944 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0750; Airspace Docket No. 11–AWP–4]

RIN 2120–AA66

Proposed Establishment of VOR Federal Airway V–629; Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a new VHF Omnidirectional Range (VOR) Federal airway near Las Vegas, NV, to supplement the existing route structure for aircraft navigating in an area of marginal radar coverage. This would enhance the efficiency of the National Airspace System (NAS).

DATES: Comments must be received on or before October 22, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2012–0750 and Airspace Docket No. 11–AWP–4 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–0750 and Airspace Docket No. 11–AWP–4) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0750 and Airspace Docket No. 11–AWP–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations

(14 CFR) part 71 to establish VOR Federal airway V–629 near Las Vegas, NV. The proposed route would extend between a point approximately 26 NM northeast of the Goffs, CA, VORTAC and the Boulder City, NV, VORTAC. The purpose of the proposed route is to increase the efficiency of the NAS in the vicinity of Las Vegas and to provide positive course guidance for aircraft navigating in an area of marginal radar coverage.

VOR Federal airways are published in paragraph 6010 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 airway listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed 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 modifies the route structure as required to preserve the safe and efficient flow of air traffic in the Las Vegas, NV, area.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, Dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6010 Domestic VOR Federal airways.

* * * * *

V–629 [New]

From INT Goffs, CA, 033°(T)/018°(M) and the Boulder City, NV, 182°(T)/167°(M) radials to Boulder City.

Issued in Washington, DC, on August 28, 2012.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2012–21824 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0867; Airspace Docket No. 12–AGL–4]

RIN 2120–AA66

Proposed Modification of VOR Federal Airway V–170 in the Vicinity of Devils Lake, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify VHF Omnidirectional Range (VOR) Federal airway V–170 between Devils Lake, ND (DVL), and Jamestown, ND (JMS). The FAA is proposing this action to ensure the airway provides the necessary clearance from the western boundary of the newly established restricted area R–5402, Devils Lake, ND, to support non-radar separation requirements when the restricted area is active.

DATES: Comments must be received on or before October 22, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2012–0867 and Airspace Docket No. 12–AGL–4 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–0867 and Airspace Docket No. 12–AGL–4) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0867 and Airspace Docket No. 12–AGL–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for

comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Minneapolis Air Route Traffic Control Center requested the establishment of a new VOR Federal airway between DVL and JMS, west of V–170, to provide necessary clearance from the western boundary of R–5402, established for hazardous laser training activities, in support of non-radar separation requirements. Their request proposed the new airway use the DVL VOR 180° (M) and JMS VOR 327° (M) radials to provide the required non-radar separation and airway clearance from R–5402, regardless of the restricted area status, as well as 15 degrees of separation from V–170. The Central Service Center (CSC) conducted a feasibility review of the request and recommended amending the existing V–170 airway between DVL and JMS instead of creating a new airway in that area.

The Feasibility Review Panel considered potential impacts to flight procedures, safety, environmental, air traffic control procedures, and other pending en route or terminal actions in their review, and determined that amending V–170 between DVL and JMS would be the best alternative. They also determined that inserting a slight ''dogleg'' to the west, in V–170 between DVL and JMS, would provide a non-radar routing clear of R–5402 and allow nonparticipating aircraft below 8,000 feet MSL to have unimpeded transit between DVL and JMS.

This proposed action to amend V–170 is expected to ensure availability of the airway between DVL and JMS regardless of restricted area status with minimal impact to the aviation community.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify V–170 between Devils Lake, ND, and Jamestown, ND, by inserting a slight dogleg west of the current location. This action is proposed as a result of the V–170 airway width abeam R–5402 overlapping the western boundary of the recently established R–5402 and to retain the availability of the navigation route structure between DVL and JMS regardless of the activation status of R–5402.

The FAA proposes using the DVL VOR 187° (T)/180° (M) and JMS VOR 337° (T)/327° (M) radials to redefine the airway segment and establish the FARRM fix at the intersection of the DVL VOR 187° (T)/180° (M) and JMS VOR 337° (T)/327° (M) radials. The FARRM fix would be described as the intersection of those navigation aid radials in the legal description. Specifically, the V–170 description would be amended by replacing the ''Jamestown, ND;'' reference with ''INT Devils Lake 187° (T)/180° (M) and Jamestown, ND, 337° (T)/327° (M) radials; Jamestown;''. The magnetic radial information would be removed in the final rule. This proposed modification to V–170 would add less than three nautical miles to the existing airway segment, ensure availability of V–170 between DVL and JMS regardless of the status of R–5402, reduce airspace complexity in the area, and enhance flight safety.

VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal Airways listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed 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 proposes to modify VOR Federal Airways in the vicinity of Devils Lake, ND.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 the FAA Order 7400.9V, Airspace Designations and Reporting

Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–170 [Amended]

From Devils Lake, ND; INT Devils Lake 187° (T)/180° (M) and Jamestown, ND, 337° (T)/327° (M) radials; Jamestown; Aberdeen, SD; Sioux Falls, SD; Worthington, MN; Fairmont, MN; Rochester, MN; Nodine, MN; Dells, WI; INT Dells 097° and Badger, WI, 304° radials; Badger; INT Badger 121° and Pullman, MI, 282° radials; Pullman; Salem, MI. From Erie, PA; Bradford, PA; Slate Run, PA; Selinsgrove, PA; Ravine, PA; INT Ravine 125° and Modena, PA, 318° radials; Modena; Dupont, DE; INT Dupont 223° and Andrews, MD, 060° radials; to INT Andrews 060° and Baltimore, MD, 165° radials. The airspace within R–5802 is excluded.

Issued in Washington, DC, on August 28, 2012.

Gary A. Norek,

Manager, Airspace Policy & ATC Procedures Group.

[FR Doc. 2012–21827 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2012–C–0900]

GNT USA, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that GNT USA, Inc. (GNT) has filed a petition proposing that the color additive regulations be amended to provide for the safe use of spirulina concentrate, made from the edible blue-green cyanobacterium *Arthrospira platensis* (also known as *Spirulina platensis*) as a color additive in food.

FOR FURTHER INFORMATION CONTACT: Raphael A. Davy, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1272.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 2C0297) has been filed by GNT, c/o Hogan Lovells US LLP, Columbia Square, 555 Thirteenth St. NW., Washington, DC 20004. The petition proposes to amend the color additive regulations in 21 CFR part 73, *Listing of Color Additives Exempt From Certification* to provide for the safe use of spirulina concentrate made from the edible blue-green cyanobacterium *Arthrospira platensis* (also known as *Spirulina platensis)* as a color additive in food.

The Agency has determined under 21 CFR 25.32(k) 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.

Dated: August 31, 2012.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2012–21917 Filed 9–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–138489–09]

RIN 1545–BI93

Integrated Hedging Transactions of Qualifying Debt

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations (TD 9598) under section 988(d) of the Internal Revenue Code. These regulations address certain integrated transactions that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by December 5, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138489–09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138489–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–138489–09).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Sheila Ramaswamy, at (202) 622–3870; concerning submissions and delivery of comments, Oluwafunmilayo Taylor, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** provide guidance regarding certain integrated transactions that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and

place for a public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Sheila Ramaswamy, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2.

Section 1.988–5 is amended by revising paragraph (a)(6)(ii) and adding paragraph (a)(9)(iv) *Example 11* and paragraph (h) to read as follows:

§ 1.988–5 Section 988(d) hedging transactions.

(a) * * *

(6) * * *

(ii) [The text of these proposed amendments to § 1.988–5(a)(6)(ii) is the same as the text of § 1.988–5T(a)(6)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(9) * * *

(iv) * * *

* * * * *

Example 11: [The text of these proposed amendments to § 1.988–5(a)(9)(iv) Example 11 is the same as the text of § 1.988–5T(a)(9)(iv) Example 11 published elsewhere in this issue of the **Federal Register**.]

* * * * *

(h) [The text of these proposed amendments to § 1.988–5(h) is the same as the text of § 1.988–5T(h) published elsewhere in this issue of the **Federal Register**.]

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–21987 Filed 9–5–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–RCRA–2011–0524 [FRL–9703–2]]

RIN 2050–AG71

Polychlorinated Biphenyls (PCBs): Revisions to Manifesting Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is issuing this proposed rule to update and clarify several sections of the Polychlorinated Biphenyl (PCB) regulations associated with the manifesting requirements, which uses the Resource Conservation and Recovery Act (RCRA) Uniform Hazardous Waste Manifest, under the Toxic Substances Control Act (TSCA). Today's changes are to match, as much as possible, the manifesting requirements for PCBs under TSCA to the manifesting requirements for hazardous waste under RCRA, of which the regulatory changes to implement the Uniform Hazardous Waste Manifest form were promulgated on March, 4, 2005.

DATES: Written comments must be received by November 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0524, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov* and *noggle.william@epa.gov.* Attention Docket ID No. EPA–HQ–RCRA–2011–0524.
- *Fax:* 202–566–9744. Attention Docket ID No. EPA–HQ–RCRA–2011–0524.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2011–0524. Please include a total of 2 copies.
- *Hand Delivery:* Please deliver 2 copies to the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. 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–RCRA–2011–0524. 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 any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ-Docket Center, Docket ID No EPA–HQ–RCRA–2011–0524, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Noggle, U.S. Environmental

Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Avenue NW., Washington, DC 20460, Phone: 703–347–8769; or by email: *noggle.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Why is EPA issuing this proposed rule?
II. Does this action apply to me?
III. Statutory and Executive Order Reviews

I. Why is EPA using this proposed rule?

This document proposes a number of revisions to 40 Code of Federal Regulations (CFR) part 761 of the PCB regulations. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is making these changes as a direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action, including our reasons to all of the specific amendments, in the preamble to the direct final rule. Additionally, the amendments to the regulatory text for this proposed rule can also be found in the direct final rule. If we receive no adverse comment on any of the changes we are promulgating today, we will not take further action on this proposed rule. If, however, we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that these amendments will not take effect, and the reason for such withdrawals. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA will address public comments in any subsequent final rule. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

The discussion of the potentially affected entities by this proposed rule can be found in the preamble to the direct final rule.

III. Statutory and Executive Order Reviews

For a complete discussion of all the administrative requirements applicable to this action, see the direct final rule in the ''Rules and Regulations'' section of this **Federal Register**.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in hazardous waste treatment and disposal as defined by NAICS code 562211, with annual receipts of less than 12.5 million dollars (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule merely updates the existing regulations for manifesting PCB wastes to match the existing Uniform Hazardous Waste Manifest form. Once updated, the regulations will match what is currently being conducted by industry.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Manifest, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: August 17, 2012.

Lisa Feldt,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2012–21675 Filed 9–5–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 15, 17, 42, and 49

[FAR Case 2012–009; Docket 2012–0009; Sequence 1]

RIN 9000–AM34

Federal Acquisition Regulation; Documenting Contractor Performance

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 provide Governmentwide standardized past performance evaluation factors and performance rating categories and require that past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS).

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before November 5, 2012 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR Case 2012–009 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–009''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2012–009. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2012–009'' 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 2012–009 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. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 37704 on June 28, 2011, under FAR Case 2009–042, to implement recommendations from Government Accountability Office (GAO) Report GAO–09–374, entitled ''Better Performance Information Needed to

Support Agency Contract Award Decisions,'' and Office of Federal Procurement Policy (OFPP) memorandum entitled ''Improving the Use of Contractor Performance Information'' (dated July 29, 2009). Two amendments to the **Federal Register** notice were published (76 FR 48776, dated August 9, 2011, and 76 FR 50714, dated August 16, 2011). The due date for receipt of public comments was extended twice and was ultimately set at September 29, 2011. Twentythree respondents submitted comments on the proposed rule. This proposed rule addresses all comments received in response to the proposed rule published in the **Federal Register** at 76 FR 37704 on June 28, 2011. This proposed rule also implements paragraphs (a), (b), and (d) of section 806 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81) which requires, at a minimum—

(1) Establishment of standards for the timeliness and completeness of past performance submissions for purposes of databases;

(2) Assignment of responsibility and management accountability for the completeness of past performance submissions for such purposes; and

(3) Assurance that past performance submissions are consistent with award fee evaluations in cases where such evaluations have been conducted.

The FAR Council is soliciting public comments on a proposal to remove the appeal language at FAR 42.1503(d) to improve economy and efficiency. This proposal was included in and consistent with the FAR Council's Retrospective Plan and Analysis of Existing Rules as required by Executive Order 13563. The FAR currently requires agencies to provide for review of agency evaluations at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The Government is considering the merits of modifying the FAR requirements governing the appeal process to evaluate if this would improve or weaken the effectiveness of past performance policies and associated principles of impartiality and accountability.

II. Discussion and Analysis of the Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of this proposed rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

1. The Councils amended FAR 42.1503 language in this proposed rule to require the past performance report to include a clear, non-technical description of the principal purpose of the contract;

2. FAR 42.1503(b)(4) is revised by adding two tables:

- Table 42–1—Evaluation Ratings Definitions; and
- Table 42–2—Evaluation Ratings Definitions (for the Small Business Subcontracting Evaluation factor when the clause at 52.219–9 is used).

3. The Evaluation Ratings Definitions included in the Tables are based upon guidance provided in the Department of Defense CPARS Policy Guide currently available on the Web site. The U.S. Small Business Administration provided recommendations to Table 42–2, and the revised text is included in this proposed rule.

4. Evaluation descriptions are revised under FAR 42.1503(b)(2) to the following:

Evaluation factors for each assessment shall include, at a minimum, the following:

(i) Technical (quality of product or service.)

(ii) Cost control (not applicable for firm-fixed-price or fixed-price with economic price adjustment arrangements).

(iii) Schedule/Timeliness.

(iv) Management or Business Relations.

(v) Small Business Subcontracting (as applicable, see Table 42–2).

(vi) Other (as applicable) (*e.g.,* late or nonpayment to subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost and pricing data, terminations, suspension and debarments, etc.)

5. Architect-Engineer Contract Administration Support System (ACASS) and Construction Contractor Appraisal Support System (CCASS) are not changed at this time. There is an effort that will combine all three systems into one, namely CPARS, and all evaluation rating scales will be the same at that point. This issue will be resolved when the systems are merged.

B. Support for the Rule

Comments: Seven respondents expressed support for the rule's purpose of standardizing the collection and evaluation of past performance information. One of these respondents deemed the proposed rule a positive implementation of the Government Accountability Office (GAO) recommendation.

Response: Noted.

C. OFPP Act Requirements

Comments: Two respondents expressed concern that including the past performance categories and definitions in the CPARS Guide rather than in the text of the FAR was effectively a violation of the Office of Federal Procurement Policy Act (41 U.S.C. 1707 (formerly 41 U.S.C. 418b)) and the FAR 1.501–2 requirement to publish significant revisions that affect the public for comment. The CPARS Guide has not been published for public comment at this time. Both respondents recommended that the proposed FAR rule be revised to include the past performance ratings definitions in the FAR text and that the revised FAR rule be published for public comment.

Response: The respondents' concerns have been addressed in FAR 42.1503(b)(4) and by this second proposed rule by adding Table 42–1 and Table 42–2.

D. Alleged Weaknesses in CPARS System

Comments: Four comments were received alleging weaknesses in the current CPARS system. One respondent noted the lack of standard, reliable past performance ratings. Other issues raised concerned the current high overdue rates Governmentwide for submission of past performance ratings, the failure of the Government's ''chain of command'' to ensure timely completion of past performance ratings, and the need to make the CPARS system even simpler and less time consuming.

Response: The comment on the reliable past performance ratings definitions is addressed under category C of this rule. The comments on overdue rates and timely completion reflect issues related to administration, which can be addressed by the respective contracting officers. The comments related to the CPARS system have been provided to the appropriate office for consideration.

E. Public Availability of Information/ FAPIIS

Comments: Four comments were submitted. One respondent recommended that the background section of the final rule explain how the Federal Awardee Performance and Integrity Information System (FAPIIS) is affected by the CPARS requirements and what role it will play in the process. Another respondent recommended increased clarity for FAR 42.1503(d) because it could be read to allow release of past performance information to third parties once the periods in FAR

42.1503(g) have expired. A third respondent advocated the wide release of past performance evaluations, *i.e.,* not requiring the marking of such information ''Source Selection Information'' and releasing past performance evaluation information in FAPIIS.

Response: The publication of past performance reviews in the public version of FAPIIS is currently prohibited by law (section 3010 of Pub. L. 111–212, enacted July 29, 2010). The relationship between FAPIIS and CPARS is explained at the FAPIIS Web site as follows:

''FAPIIS is a distinct application that is accessed through the Past Performance Information System (PPIRS) and is available to federal acquisition professionals for their use in award and responsibility determinations. FAPIIS provides users access to integrity and performance information from the FAPIIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), proceedings information from the Central Contractor Registration (CCR) database, and suspension/disbarment information from the Excluded Parties List system (EPLS).''

Regarding the release of past performance information, FAR 42.1503(d) reads as follows:

''The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations.''

These sentences, which were not in any way limited by the time periods in FAR 42.1503(g), were not changed by this proposed rule.

F. Exceptions/Applicability

Comment: One respondent recommended exempting all science and technology contracts from the requirement to evaluate past performance.

Response: The Councils have determined that it is not in the Government's best interest to exempt science and technology contracts from past performance assessments.

Comment: Respondent asked that the final rule clarify (1) whether past performance evaluations are required for individual task orders and delivery orders or only for the base indefinite-delivery contract; and (2) who is the responsible party for completing these evaluations.

Response: The requirement for past performance assessments for individual task and delivery orders, and the parties responsible, are addressed in FAR 42.1502(c) and (d) as follows:

(c) *Multiple-agency orders.* Agencies shall prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold placed against a Federal Supply Schedule contract, or under a task-order contract or a delivery-order contract awarded by another agency (*i.e.,* Governmentwide acquisition contract or multi-agency contract). This evaluation shall not consider the requirements under paragraph (g) of this section. Agencies are required to prepare an evaluation if a modification to the order causes the dollar amount to exceed the simplified acquisition threshold.

(d) *Single-Agency orders.* For single-agency task-order and delivery-order contracts, the contracting officer may require performance evaluations for each order in excess of the simplified acquisition threshold when such evaluations would produce more useful past performance for source selection officials than that contained in the overall contract evaluation (*e.g.,* when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

G. Rating Factors

Comments: One respondent suggested that a sixth rating category, entitled ''Other,'' be added to the current five categories. Another respondent recommended that each past performance evaluation should be required to include an evaluation of the contractor's small business subcontracting instead of the current requirement to do so only ''when applicable.''

Response: The Councils agree that adding the evaluation factor ''Other'' at FAR 42.1503(b)(2) allows the Government to consider contingencies not contemplated by factors (i) through (v) that are unique to each contract award and are relevant to the contractor's evaluation. FAR 42.1503(b)(2) is changed to add evaluation factor ''(vi) Other (as applicable) (*e.g.;* late or nonpayment to subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost and pricing data, terminations, suspension and debarments, etc.)''. ''Small Business Subcontracting'' may be included as a past-performance factor ''as applicable.'' The Councils did not change this language because there are instances where ''Small Business Subcontracting'' may require a past performance assessment.

H. Interim Ratings and Frequency of Ratings

Comments: One respondent recommended revising FAR 42.1502(b) to require more than one past performance evaluation a year for on-going contracts. However, another respondent strongly urged a prohibition against including interim ratings in final past performance evaluations. The same respondent stated that problems can arise with performance evaluations when the Government rater for an interim evaluation is transferred before the contract is completed. This respondent also noted that it has observed evaluation disparities among various contracting entities.

Response: FAR 42.1502(a) requires a minimum of one evaluation a year; however, agencies are not precluded from assessing past performance on a more frequent basis. The comments regarding interim evaluations and changes in Government personnel (rater) reflect issues of administration, and can be discussed with the respective contracting officer. The comment on observed evaluation disparities among various contracting entities is noted but this, too, is not a policy issue.

I. Other Comments

Comments: One respondent submitted a draft for a new past performance evaluation form. The respondent also asked whether additional items could be added to the CPARS past performance evaluation for comments from (1) Government quality assurance personnel, (2) contractor quality control personnel, and (3) the contracting officer's representative. Another respondent expressed concern that allowing contractors to ''report to the CPARS system'' would have a negative impact on future competitiveness because all contractors would give themselves a positive performance rating. A third respondent stated its concern that the proposed rule was ''essentially a creation of several memorandums and not a direct result of the traditional rulemaking process.''

Response: CPARS has a pre-established, electronic format for assessment of past performance; therefore, a new form is not needed at this time. FAR 42.1503(a) provides agencies the flexibility of requesting and obtaining input from other Government representatives as the contracting officer considers necessary. It may not be appropriate to require past performance input from (1) Government quality assurance personnel, (2) contractor quality control personnel, and (3) the

contracting officer's representative in every case. These individuals, when requested by the Government past performance official, can provide input under the ''Assessing Official Representative'' field. Contractors have the opportunity to respond to the Government's past performance assessment in every case. This material is in addition to, not in lieu of, the Government's assessment. Therefore, a contractor's tendency to give itself a positive performance rating in every case will not have a negative impact on future competitiveness, the concern expressed by one respondent. The Councils complied with all of the drafting and approval requirements applicable to every FAR Case.

Comment: One respondent commented on the proposed FAR 42.1503(a) statement that, if contracting officers' representatives and program managers are not specifically tasked with preparing interim and final past performance evaluations, then the contracting officer ''will remain responsible'' for their preparation. The respondent asked where past performance duties are assigned in the FAR as the responsibility of the contracting officer.

Response: The Councils agree that FAR 42.1503 was not sufficiently clear. FAR 42.1503(a) is changed to reflect that the contracting officer ''is'' responsible for this function if agency procedures do not specify a different responsible individual.

Comment: One respondent recommended that the duties of the CPARS Focal Point, at FAR 42.1503(h)(3), would be more accurate if the paragraph were revised to read as follows: ''The primary duties of the CPARS Focal Point include administering CPARS and FAPIIS access, monitoring CPARS compliance, and providing assistance, guidance, and training to CPARS and FAPIIS users.''

Response: FAR 42.1503(h)(2) clarifies that only a CPARS Focal Point has the authority to grant access to the information in the system. FAR 42.1503(h)(3) merely listed some of the Focal Point's key duties. Upon reflection, the Councils decided that this information is not pertinent to an acquisition regulation and belongs, rather, in a position description. FAR 42.1503(h)(3) currently references the disclosure exemption under the Freedom of Information Act.

Comment: One respondent proposed that FAR 42.1503 should be revised to include ''ACASS/CCASS'' and requiring that the standardized five ratings must be used in source selections.

Response: The second proposed rule already requires agencies to use the standardized five ratings, with certain exceptions that were listed at FAR 42.1502. These exceptions are retained in the second proposed rule, *e.g.,* for construction and architect-engineering contracts; language is added to 42.1502(b) on reporting into ACASS and CCASS.

Comment: A respondent stated that FAR 42.1503(h)(1) was missing the ''vertical list that currently resides at FAR 42.1503(f).''

Response: The vertical list referred to by the respondent was added to the previous proposed rule by the **Federal Register** notice correction, published August 9, 2011, at 76 FR 48776. The respondent submitted this comment prior to issuance of the correction.

Comment: One respondent asked that the word ''generally,'' at FAR 42.1503(a), be removed because it allows for exceptions to the broad policy.

Response: The term ''generally'' is in the current FAR and was not proposed for change in the previous proposed rule. The input of the technical office, contracting office, and end-users of the products or services is not always required in every case. Therefore, the requested change is not made.

Comment: One respondent recommended revising FAR 42.1503(b)(1) to read as follows:

> ''The report should include a clear description of the principal purpose of the contract in plain English, a description of the contractor's performance based on objective facts supported by program, project, and contract performance data, and any unusual circumstances affecting contractor performance, *e.g.,* hazardous location of performance. Ensure tailoring of each report to the contract dollar value, visibility, complexity, and value.''

The respondent suggested that the revisions were needed because the terms ''size'' and ''content'' were unclear.

Response: The Councils agree that the CPARS ratings will be more useful to those using the system during source selection if the report were to include a requirement to ''include a clear, non-technical description of the principal purpose of the contract.'' This language is added at FAR 42.1503(b)(1) in the second proposed rule.

The balance of the respondent's comment was not adopted because the language proposed to be included at FAR 42.1503(b)(1) is considered to be appropriately clear and descriptive.

Comment: At FAR 42.1503(b)(4), the respondent recommended revising the paragraph as follows in order to increase clarity: ''Each evaluation factor at paragraph (b)(2) of this section requires narrative that clearly supports the rating assigned using the rating definitions in the CPARS Policy Guide, *http://www.cpars.gov/.''*

Response: Given that the CPARS rating categories and definitions are proposed to be added in this same paragraph by this proposed rule (see section II.C. above), the respondent's intent has been addressed.

Comment: At FAR 42.1503(f), the respondent recommended that additional clarity could be achieved by changing the wording to read: ''Agencies shall prepare all past performance reports electronically in CPARS at *http://www.cpars.gov/.* All completed reports in CPARS transmit to the Past Performance Information Retrieval System (PPIRS) at *http://www.ppirs.gov* for viewing by Government source selection officials.''

Response: Most of the material in the respondent's recommendation is now in this proposed rule; the part of the recommendation that is new is the addition of the phrase ''for viewing by Government source selection officials''. However, this is not adopted because, while access to the information in CPARS is limited, it is not limited in every case only to source selection officials.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). 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.

IV. 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 codifies in the FAR existing guidelines and practices. The evaluation factors and rating system language proposed are currently used by Federal

agencies. There are no new requirements placed on small entities. Therefore, an initial regulatory flexibility analysis was not performed, and no comments on the expected impact of this rule on small entities were received in response to the request for comments in the **Federal Register** notice for the prior proposed rule. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2012–009), in correspondence.

V. Paperwork Reduction Act

The 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). No public comments were received on the information collection requirements in response to the request in the proposed rule.

List of Subjects in 48 CFR parts 8, 12, 15, 17, 42, and 49

Government procurement.

Dated: August 31, 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 parts 8, 12, 15, 17, 42, and 49 as set forth below:

1. The authority citation for 48 CFR parts 8, 12, 15, 17, 42, and 49 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.406–4 [Amended]

2. Amend section 8.406–4 by removing from paragraph (e) ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

3. Revise section 8.406–7 to read as follows:

8.406–7 Contractor Performance Evaluation.

Ordering activities must prepare at least annually and at the time the work under the order is completed, an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold in accordance with 42.1502(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.403 [Amended]

4. Amend section 12.403 by removing from paragraph (c)(4) ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.407–1 [Amended]

5. Amend section 15.407–1 by removing from paragraph (d) ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

PART 17—SPECIAL CONTRACTING METHODS

6. Amend section 17.207 by adding paragraph (c)(6) to read as follows:

17.207 Exercise of options.

* * * * *

(c) * * *

(6) The contractor's past performance evaluations have been reviewed and the contractor's performance rated.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

7. Revise sections 42.1500 and 42.1501 to read as follows:

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. See subpart 16.4. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel and be consistent with the fee determinations.

42.1501 General.

(a) Past performance information (including the ratings and supporting narratives) is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of—

(1) Conforming to contract requirements and to standards of good workmanship;

(2) Forecasting and controlling costs;

(3) Adherence to contract schedules, including the administrative aspects of performance;

(4) Reasonable and cooperative behavior and commitment to customer satisfaction;

(5) Reporting into databases (see subparts 4.14 and 4.15, and reporting requirements in the solicitation provisions and clauses referenced in 9.104–7);

(6) Integrity and business ethics; and

(7) Business-like concern for the interest of the customer.

(b) Agencies shall monitor their compliance with the past performance evaluation requirements (see 42.1502), and use the CPARS and PPIRS metric tools to measure the quality and timely reporting of past performance information.

8. Amend section 42.1502 by revising paragraphs (a) through (d) and (i) to read as follows:

42.1502 Policy.

(a) *General.* Past performance evaluations shall be prepared at least annually and at the time the work under the contract or order is completed. Past performance evaluations are required for contracts and orders for supplies, services, and research and development, including contracts and orders performed inside and outside the United States, with the exception of architect-engineer and construction contracts or orders, which will still be reported into ACAAS and CCASS databases. Past performance information shall be entered into the Contractor Performance Assessment Reporting System (CPARS), the Governmentwide evaluation reporting tool for all past performance reports. Instructions for submitting evaluations into CPARS are available at *http://www.cpars.gov/.*

(b) *Contracts.* Except as provided in paragraphs (e), (f) and (h) of this section, agencies shall prepare evaluations of contractor performance for each contract or order that exceeds the simplified acquisition threshold. Agencies are required to prepare an evaluation if a modification to the contract causes the dollar amount to exceed the simplified acquisition threshold.

(c) *Multiple-agency orders.* Agencies shall prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold placed against a Federal Supply Schedule contract, or under a task-order contract or a delivery-order contract awarded by another agency (*i.e.,* Governmentwide acquisition contract or multi-agency contract). This evaluation shall not consider the requirements under paragraph (g) of this section. Agencies are required to prepare an evaluation if a modification to the order

causes the dollar amount to exceed the simplified acquisition threshold.

(d) *Single-Agency orders.* For single-agency task-order and delivery-order contracts, the contracting officer may require performance evaluations for each order in excess of the simplified acquisition threshold when such evaluations would produce more useful past performance for source selection officials than that contained in the overall contract evaluation (*e.g.,* when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

* * * * *

(i) Agencies shall promptly report other contractor information in accordance with 42.1503(h).

9. Revise section 42.1503 to read as follows:

42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall—

(1) Generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service;

(2) Identify and assign past performance evaluation roles and responsibilities to those individuals responsible for preparing and reviewing interim evaluation, if prepared, and final evaluations (*e.g.,* contracting officers, contracting officer representatives and program managers); and

(3) Address management controls and appropriate management reviews of past performance evaluations, to include accountability, for documenting past performance on PPIRS. If agency procedures do not specify the individuals responsible for past performance evaluation duties, the contracting officer is responsible for this function. Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, audit office, end users of the product or service, and any other technical or business advisor, as appropriate.

(b)(1) The evaluation should include a clear, non-technical description of the principal purpose of the contract. The evaluation should reflect how the contractor performed. The evaluation should include clear relevant information that accurately depicts the contractor's performance, and be based on objective facts supported by program and contract performance data. The evaluations should be tailored to the contract type, size, content, and complexity of the contractual requirements.

(2) Evaluation factors for each assessment shall include, at a minimum, the following:

(i) Technical (quality of product or service.)

(ii) Cost control (not applicable for firm-fixed-price or fixed-price with economic price adjustment arrangements).

(iii) Schedule/Timeliness.

(iv) Management or Business Relations.

(v) Small Business Subcontracting (as applicable see Table 42–2).

(vi) Other (as applicable) (*e.g.,* late or nonpayment to subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost and pricing data, terminations, suspension and debarments, etc.)

(3) Evaluation factors may include subfactors. Each factor and subfactor used shall be evaluated and a supporting narrative provided.

(4) Each evaluation factor, as listed in paragraph (b)(2) of this section, shall be rated in accordance with a five scale rating system (*e.g.,* exceptional, very good, satisfactory, marginal, and unsatisfactory). Rating definitions shall reflect those in the tables below:

TABLE 42–1—EVALUATION RATINGS DEFINITIONS

Rating	Definition	Note
Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with some minor problems for which corrective actions taken by the contractor was effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There should have been no significant weaknesses identified.
Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order. There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be evaluated with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.
Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being evaluated reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating should be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).

TABLE 42–1—EVALUATION RATINGS DEFINITIONS—Continued

Rating	Definition	Note
Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).

Note 1: Plus or minus signs may be used to indicate an improving (+) or worsening (−) trend insufficient to change the evaluation status.
Note 2: N/A (not applicable) should be used if the ratings are not going to be applied to a particular area for evaluation.

TABLE 42–2—EVALUATION RATINGS DEFINITIONS

[For the Small Business Subcontracting Evaluation Factor, when 52.219–9 is used]

Rating	Definition	Note
Exceptional	Exceeded all statutory goals or goals as negotiated. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business, veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB). Complied with FAR 52.219–8, Utilization of Small Business Concerns. Exceeded any other small business participation requirements incorporated in the contract/order, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract/order. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Small businesses should be given meaningful and innovative work directly related to the contract, and opportunities should not be limited to indirect work such as cleaning offices, supplies, landscaping, etc. Also, there should have been no significant weaknesses identified.
Very Good	Met all of the statutory goals or goals as negotiated. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone, VOSB, and SDVOSB. Complied with FAR 52.219–8, Utilization of Small Business Concerns. Met or exceeded any other small business participation requirements incorporated in the contract/order, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify a Very Good rating, identify a significant event and state how they were a benefit to small business utilization. Small businesses should be given meaningful and innovative opportunities to participate as subcontractors for work directly related to the contract, and opportunities should not be limited to indirect work such as cleaning offices, supplies, landscaping, etc. There should be no significant weaknesses identified.
Satisfactory	Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-economic categories for the current period. Complied with FAR 52.219–8, Utilization of Small Business Concerns. Met any other small business participation requirements included in the contract/order. Fulfilled the requirements of the subcontracting plan included in the contract/order. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor has addressed or taken corrective action. There should have been no significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.
Marginal	Deficient in meeting key subcontracting plan elements. Deficient in complying with FAR 52.219–8, Utilization of Small Business Concerns, and any other small business participation requirements in the contract/order. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan.	To justify Marginal performance, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating should be supported by referencing the actions taken by the government that notified the contractor of the contractual deficiency.

TABLE 42–2—EVALUATION RATINGS DEFINITIONS—Continued

[For the Small Business Subcontracting Evaluation Factor, when 52.219–9 is used]

Rating	Definition	Note
Unsatisfactory	Noncompliant with FAR 52.219–8 and 52.219–9, and any other small business participation requirements in the contract/order. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan.	To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however, could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the contracting officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required by FAR 52.219–9 and follow the procedures outlined in FAR 52.219–16, Liquidated Damages-Subcontracting Plan.

Note 1: Plus or minus signs may be used to indicate an improving (+) or worsening (−) trend insufficient to change evaluation status.

Note 2: For subcontracting plans under the DoD Comprehensive Small Business Subcontracting Plan (Test Program), DFARS 252.219–7004 (deviation), the ratings entered in CPARS shall mirror those assigned by the Defense Contract Management Agency who is responsible for monitoring such plans.

Note 3: Generally, zero percent is not a goal unless the Contracting Officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor shall be considered to have met the goal for any socio-economic category where the goal negotiated in the plan was zero.

(c)(1) When the contract provides for incentive fees, the incentive-fee contract performance evaluation shall be entered into CPARS.

(2) When the contract provides for award fee, the award fee-contract performance adjectival rating as described in 16.401(e)(3) shall be entered into CPARS.

(d) Agency evaluations of contractor performance, including both negative and positive evaluations, prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractor will receive a CPARS-system generated notification when an evaluation is ready for comment. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked ''Source Selection Information.'' Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see 8.604) when FPI is a mandatory source in accordance with subpart 8.6. The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

(e) Agencies shall require frequent evaluation (*e.g.,* quarterly) of agency compliance with the reporting requirements in 42.1502, so agencies can readily identify delinquent past performance reports and monitor their reports for quality control.

(f) Agencies shall prepare and submit all past performance evaluations electronically in the CPARS at *http://www.cpars.gov/.* These evaluations are automatically transmitted to the Past Performance Information Retrieval System (PPIRS) at *http://www.ppirs.gov.* Past performance evaluations for classified contracts and special access programs shall not be reported in CPARS, but will be reported as stated in this subpart and in accordance with agency procedures. Agencies shall ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with 42.1503(d).

(g) Agencies shall use the past performance information in PPIRS that is within three years (six for construction and architect-engineer contracts) and information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS), *e.g.,* terminations for default or cause.

(h) *Other contractor performance information.* (1) Agencies shall ensure information is accurately reported in the FAPIIS module of CPARS within 3 calendar days after a contracting officer—

(i) Issues a final determination that a contractor has submitted defective cost or pricing data;

(ii) Makes a subsequent change to the final determination concerning defective cost or pricing data pursuant to 15.407–1(d);

(iii) Issues a final termination for cause or default notice; or

(iv) Makes a subsequent withdrawal or a conversion of a termination for default to a termination for convenience.

(2) Agencies shall establish CPARS Focal Points who will register users to report data into the FAPIIS module of CPARS (available at *http://www.cpars.gov/,* then select FAPIIS).

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the contracting officer shall follow the procedures at 9.105–2(b)(2)(iv).

PART 49—TERMINATION OF CONTRACTS

49.402–8 [Amended]

10. Amend section 49.402–8 by removing ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

[FR Doc. 2012–21973 Filed 9–5–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 9, and 52

[FAR Case 2009–024; Docket 2009–024; Sequence 2]

RIN 9000–AM07

Federal Acquisition Regulation; Prioritizing Sources of Supplies and Services for Use by the Government

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of June 14, 2011, regarding Prioritizing Sources of Supplies and Services for Use by the Government. This document adds an Initial Regulatory Flexibility Analysis which has been determined to be necessary since the initial publication of the proposed rule.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before October 9, 2012 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2009–024 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2009–024.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2009–024.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2009–024'' 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 2009–024, 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: Ms. Patricia Corrigan, Procurement Analyst, at 202–208–1963, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2009–024.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 34634 on June 14, 2011, to amend the FAR part 8. FAR part 8 requires Federal agencies to satisfy their requirements for supplies and services from or through a list of sources in order of priority. The proposed rule would amend FAR part 8 by revising FAR 8.000, 8.002, 8.003, and 8.004, eliminating outdated categories, and distinguishing between mandatory sources and non-mandatory sources for consideration. Public comments were received requesting the publication of Initial Regulatory Flexibility Analysis (IRFA) as part of the rule. Based on the comments, DoD, GSA and NASA determined it necessary since the initial publication of the proposed rule to issue an IRFA. Comments on the rest of the proposed rule will be addressed with the issuance of the final rule.

Regulatory Flexibility Act

The change may 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 the Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of this rule is to clarify the order of preference for sources that must be considered, and to distinguish them from sources that should be considered where an agency is unable to satisfy requirements for supplies and services from mandatory sources.

The basis for this proposed rule is the Government Accountability Office (GAO) decision in the protest of Murray-Benjamin Electric Company, B–298481, 2006 CPD 129, September 7, 2006 at *http://www.gao.gov/decisions/bidpro/298481.pdf.* Based upon issues brought forward in the decision, it was determined that FAR Part 8 should be amended to eliminate confusion about the use of mandatory versus non-mandatory sources. Two sections of the FAR are being amended to list only mandatory Government supply sources, and a new section is being added to encourage agencies to give consideration to using certain existing non-mandatory sources to leverage agency buying power and achieve administrative efficiencies that reduce costs and produce savings for our taxpayers. No new mandatory sources are proposed for consideration, only existing sources were included for informational purposes. The clarification is being made to assist both the public and the Federal contracting community by allowing them to better understand and distinguish between sources that are mandatory for use and those that are not mandatory. The non-mandatory sources (*e.g.,* Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts, blanket purchase agreements (BPAs) under Federal Supply Schedule contracts (*e.g.,* Federal Strategic Sourcing Initiative (FSSI) agreements)) in the new section are existing sources intended for use by multiple agencies, and existed prior to promulgation of the proposed change to the FAR. The proposed rule only reflects the practice and use of the existing non-mandatory sources throughout the Government. The existing non-mandatory sources are being listed prior to commercial sources, but agencies remain free to compete their requirements among commercial sources of supply, where it is in their best interest to meet their needs through an open-market procurement.

Because the rule clarifies regulations in FAR Part 8 on the use of existing mandatory and non-mandatory sources, it is estimated that the rule will apply to all entities doing business with the Government, regardless of business size. Based on Federal Procurement Data System reporting data, in Fiscal Year 2011, a Governmentwide total of 193,515 new awards were made to small businesses and other than small businesses. Of that total, 130,704 new award actions were made to small business entities. The remaining 62,811 award actions were made to other than small businesses. This clarification, consistent with the GAO decision in the Murray-Benjamin Electric Company protest (B–298481), clarifies existing FAR text regarding existing mandatory and non-mandatory sources. No new sources were added to the FAR and all contractors are encouraged to participate in the mandatory and non-mandatory source programs.

This rule does not add any new compliance requirements or information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

No acceptable alternatives were determined. By providing clarification, the rule reduces the probability that applicable statutes, regulation, and policy will be misinterpreted or misapplied at the possible economic detriment of small entities.

The Regulatory Secretariat will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on

the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this 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 2009–024) in correspondence.

List of Subjects in 48 CFR Parts 8, 9, and 52

Government procurement.

Dated: August 31, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–21991 Filed 9–5–12; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 77, No. 173

Thursday, September 6, 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

Submission for OMB Review; Comment Request

August 30, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: Application for Authorization to Use the 4–H Name and/or Emblem.

OMB Control Number: 0524–0034.

Summary of Collection: Use of the 4–H Club Name and/or Emblem is authorized by an Act of Congress, (Pub. L. 772, 80th Congress, 645, 2nd Session). Use of the 4–H Club Name and/or Emblem by anyone other than the 4–H Clubs and those duly authorized by them, representatives of the Department of Agriculture, the Land-Grant colleges and universities, and person authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary has delegated authority to the Administrator of the National Institute of Food and Agriculture (NIFA) to authorize others to use the 4–H Name and Emblem. Therefore, anyone requesting authorization from the Administrator to use the 4–H Name and Emblem is asked to describe the proposed use in a formal application. NIFA will collect information using form NIFA–01 ''Application for Authorization to Use the 4–H Club Name or Emblem.''

Need and Use of the Information: The information collected by NIFA will be used to determine if those applying to use the 4–H name and emblem are meeting the requirements and quality of materials, products and/or services provided to the public. If the information were not collected, it would not be possible to ensure that the products, services, and materials meet the high standards of 4–H, its educational goals and objectives.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 60.

Frequency of Responses: Reporting: Other (every 3 years).

Total Burden Hours: 30.

National Institute of Food and Agriculture

Title: Children, Youth, and Families at Risk (CYFAR) Year End Report.

OMB Control Number: 0524–0043.

Summary of Collection: Funding for the Children, Youth, and Families at Risk (CYFAR) is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 341 et seq.), as amended and other relevant authorizing legislation, which provides jurisdictional basis for the establishment and operation of extension educational work for the benefit of youth and families in communities. The CYFAR funding program supports community-based programs serving children, youth, and families in at risk environments. CYFAR funds are intended to support the development of high quality, effective programs based on research and to document the impact of these programs on intended audiences which are children, youth, and families in at-risk environments.

Need and Use of the Information: The purpose of the CYFAR Year End Report is to collect the demographic and impact data from each community site in order to evaluate the impact of the programs on intended audiences. The CYFAR data is also used to respond to requests for impact information from Congress, the White House, and other Federal agencies. Data from the CYFAR annual reports is used to refine and improve program focus and effectiveness. Without the information NIFA would not be able to verify if CYFAR programs are reaching at risk, low-income audiences.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 51.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 16,422.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–21952 Filed 9–5–12; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 31, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Technical Assistance for Specialty Crops Program.

OMB Control Number: 0551–0038.

Summary of Collection: The Technical Assistance for Specialty Crops (TASC) program is authorized by Section 3205 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). This section provides that the Secretary of Agriculture shall establish a program to address unique barriers that prohibit or threaten the export of U.S. specialty crops. The Foreign Agricultural Service (FAS) administers the program for the Commodity Credit Corporation.

The Need and Use of the Information: FAS collects data for fund allocation, program management, planning and evaluation. FAS will collect information from applicant desiring to receive grants under the program to determine the viability of requests for funds. The program could not be implemented without the submission of project proposals, which provide the necessary information upon which funding decisions are based.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 1,600.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–21957 Filed 9–5–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0035]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fish and Fishery Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), National Oceanic and Atmospheric Administration (NOAA), and the Food and Drug Administration (FDA), are sponsoring a public meeting on September 6, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 32nd session of the Codex Committee on Fish and Fishery Products (CCFFP) of the Codex Alimentarius Commission (Codex), which will be held in Bali, Indonesia from October 1–5, 2012. The Under Secretary for Food Safety, the National Oceanic and Atmospheric Administration (NOAA), and the Food and Drug Administration recognize the importance of providing interested parties the opportunity to obtain background information on the 32nd session of the CCFFP and to address items on the agenda.

DATES: The public meeting is scheduled for September 6, 2012, from 1 p.m.–3 p.m.

ADDRESSES: The public meeting will be held at the Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), Wiley Building, Room 3B047, 5100 Paint Branch Parkway, College Park, MD 20740.

Documents related to the 32nd session of the CCFFP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/.*

Timothy Hansen & Dr. William Jones, U.S. Delegates to the 32nd session of the CCFFP, invite U.S. interested parties to submit their comments electronically to the following email addresses: *Timothy.Hansen@noaa.gov* & *William.Jones@fda.hhs.gov.*

Call-In Number:

If you wish to participate in the public meeting for the 32nd session of the CCFFP by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1 (866) 565–0671.

Participant code: 5968327.

For Further Information About the 32nd Session of the CCFFP Contact: Timothy Hansen, Director, Seafood Inspection Program, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, 1315 East West Highway SSMC #3, Silver Spring, MD 20910, Phone: (301) 713–2355 Fax:(301) 713–1081, *Email: Timothy.Hansen@noaa.gov.*

Dr. William Jones, Director, Division of Seafood Safety, Office of Food Safety, (HFS–325) U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD, 20740, Phone: (240) 402–2300, Fax: (301) 436–2601, Email: *William.Jones@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Phone: (202)690–4042, Fax: (202)720–3157, Email: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCFFP is responsible for: Elaborating worldwide standards for fresh, frozen (including quick frozen) or otherwise processed fish, crustaceans and molluscs. The Committee is hosted by Norway.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 32nd session of the CCFFP will be discussed during the public meeting:

- Matters Referred to the CCFFP by the Codex Commission and Other Codex Committees
- Matters Arising from the Work of the FAO and the WHO
- Draft Standard for Smoked Fish, Smoke-Flavored Fish and Smoke Dried Fish (held at Step 7) Section 4 Food Additives
- Draft Standard for Quick Frozen Scallop Adductor Muscle Meat
- Draft Standard for Fresh/Live and Frozen Abalone (Haliotis spp)
- Proposed Draft Code of Practice on the Processing of Scallop Meat
- Proposed Draft Performance Criteria for Reference and Confirmatory Methods for Marine Biotoxins in the *Standard for Raw and Live Bivalve Molluscs*
- Proposed Draft Performance Criteria for Screening Methods for Marine Biotoxins in the *Standard for Raw and Live Bivalve Molluscs*
- Amendment to the Standard for Quick Frozen Fish Sticks (Nitrogen Factor for Atlantic Hake)
- Proposed Draft Revision of the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products
- Proposed Draft Code of Practice for Fish and Fishery Products (section on Sturgeon Caviar)
- Discussion Paper on Proposed Draft Code of Practice for Fish and Fishery Products (appendices on optional final product requirements)
- Proposed Food Additive Provisions in Standards for Fish and Fishery Products
- Discussion Paper on Histamine
- Discussion Paper on a Code of Practice for Fish Sauce

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents (see **ADDRESSES**).

Public Meeting

At the September 6, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegates for the 32nd session of CCFFP, Timothy Hansen & Dr. William Jones (see **ADDRESSES**). Written comments should state that they relate to activities of the 32nd session of the CCFFP.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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Done at Washington, DC on: August 31, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–21989 Filed 9–5–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet in Colville, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is vote on fiscal year 2012 projects.

DATES: The meeting will be held September 26, 2012, 10:00 a.m.

ADDRESSES: The meeting will be held at 985 South Elm Street, Colville, Washington, Community Colleges of Spokane: Colville Center, Dominion Room. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Colville National Forest Headquarters, 765 South Main Street, Colville, Washington, 99114, Attn: RAC Coordinator. Please call ahead to 509–684–7000 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Franklin Pemberton, Public Affairs Officer, Colville National Forest Headquarters, 509–684–7000, *fpemberton@fs.fed.us*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Discussion, presentation and voting of 2012 Colville Resource Advisory Committee projects. The full agenda may be previewed at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Colville*

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 24, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Franklin Pemberton, 765 South Main Street, Colville, Washington, 99114, or by email to *fpemberton@fs.fed.us*, or via facsimile to 509–684–7280.

Dated: August 28, 2012.

Laura Jo West,

Forest Supervisor.

[FR Doc. 2012–21926 Filed 9–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Guaranteed Rural Rental Housing Low Loan-to-Cost Ratio

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service announces the low loan-to-cost ratio required for loans guaranteed under Option Three (Continuous Guarantee) of the Guaranteed Rural Rental Housing Program (GRRHP). The GRRHP is authorized by section 538 of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2) and operates under 7 CFR part 3565. The low loan-to-cost ratio is defined at 50 percent in order for a loan to be eligible for a single continuous guarantee for construction and permanent loans pursuant to 7 CFR part 3565.52. The Rural Housing Service is not modifying the lease-up reserves and percent of guarantee previously established for this program.

FOR FURTHER INFORMATION CONTACT: Monica Cole, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1263–S, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781. Email: *monica.cole@wdc.usda.gov.* Telephone: (202) 720–1251. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Dated: August 2, 2012.

Cristina Chappe,

Acting Administrator, Rural Housing Service.

[FR Doc. 2012–21883 Filed 9–5–12; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Bend, Oregon. The purpose of the meeting is to review proposed projects and make recommendations under Title II (Pub. L. 112–141 reauthorized and amended the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS Act) as originally enacted in Pub. L. 106–393).

DATES: The meeting will be held September 24, 2012 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the office of the Central Oregon Intergovernmental Council, 334 NE Hawthorne Avenue, Bend, OR 97701. Send written comments to John Allen as Designated Federal Official, for the Deschutes and Ochoco National Forests Resource Advisory Committee, c/o Forest Service, USDA, Deschutes National Forest, 63095 Deschutes Market Road., Bend, OR 97701 or electronically to *jpallent@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: John Allen, Designated Federal Official, Deschutes National Forest, 541–383–5512.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may file written statements with the Committee staff before the meeting. A public input session will be provided and individuals who made written requests by September 17, 2012 will have the opportunity to address the Committee at the session.

Dated: August 23, 2012.

John Allen,

Forest Supervisor.

[FR Doc. 2012–21930 Filed 9–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Proposals (RFP): Farm Labor Housing Technical Assistance Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Request for Proposal (RFP) announces an availability of funds and the timeframe to submit proposals for Farm Labor Housing Technical Assistance (FLH–TA) grants.

Section 516(i) of the Housing Act of 1949, as amended (Act), authorizes the Rural Housing Service (RHS) to provide financial assistance (grants) to eligible private and public non-profit agencies to encourage the development of domestic and migrant farm labor housing projects. This RFP requests proposals from qualified private and public non-profit agencies to provide technical assistance to groups who qualify for FLH loans and grants.

Work performed under these grants is expected to result in an increased submission of quality applications for FLH loans and grants under the section 514 and 516 programs and as a result an increase in the availability of decent, safe, and sanitary housing for farm laborers.

DATES: The deadline for receipt of all applications in response to this RFP is 5:00 p.m., Eastern Daylight Time, on November 5, 2012. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), Cash on Delivery (COD), and postage due applications will not be accepted.

ADDRESSES: Applications should be submitted to the USDA—Rural Housing Service; Attention: Mirna Reyes-Bible, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0781 (Room 1243–S), USDA Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0781. RHS will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: Mirna Reyes-Bible, Finance and Loan

Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0781 (Room 1243–S), USDA Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0781, telephone: (202) 720–1753 (this is not a toll free number), or via email: *Mirna.ReyesBible@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview Information

Federal Agency Name: Rural Housing Service.

Funding Opportunity Title: Request for Proposals (RFP): Farm Labor Housing Technical Assistance Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance: 10.405.

DATES: The deadline for receipt of all applications in response to this RFP is 5:00 p.m., Eastern Daylight Time, on November 5, 2012. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

I. Funding Opportunity Description

The technical assistance grants authorized under section 516 are for the purpose of encouraging the development of domestic and migrant FLH projects under sections 514 and 516 of the Act. RHS regulations for section 514 and 516 FLH program are published at 7 CFR part 3560. Further requirements for technical assistance grants can be found at 7 CFR part 3560, subpart L. Proposals must demonstrate the capacity to provide the intended technical assistance.

The RHS intends to award one grant for each of three geographic regions listed below. When establishing the three regions, and amount of funding available for each region, consideration was given to such factors as farmworker migration patterns and the similarity of agricultural products and labor needs within certain areas of the United States. A single applicant may submit grant proposals for more than one region; however, separate proposals must be submitted for each region.

Eastern Region: AL, CT, DE, FL, GA, IN, KY, MA, MD, ME, NH, NJ, NY, NC, OH, PA, PR, RI, SC, TN, VI, VT, VA, WV.

Central Region: AR, IL, IA, KS, LA, MI, MN, MS, MO, NE., ND, OK, SD, TX, WI.

Western Region: AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY, and the Pacific Territories.

II. Award Information

The RHS has the authority under the Act to utilize up to 10 percent of its section 516 appropriation for FLH–TA grants. The total Fiscal Year (FY) 2012 appropriation for section 516 is $7,100,000. The total amount of the FY 2012 appropriation that RHS has made available for FLH–TA grants is $710,000. Of that amount, up to $250,000 will be available for each of the Eastern and Western Grant Regions and up to $210,000 of the remaining funds will be available for the Central Grant Region. Work performed under these grants must be completed within 3 years of entering into a grant agreement with RHS. The disbursement of grant funds during the grant period will be contingent upon the applicant making progress in meeting the minimum performance requirements as described in the Scope of Work section of this Notice, including, but not limited to, the submission of loan application packages.

III. Eligibility Information

Eligible Applicants: Eligibility for grants under this Notice is limited to private and public non-profit agencies. Applicants must have the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for FLH under the section 514 and 516 programs (see Section IV. Application and Submission Information). In addition, applicants must possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The applicant may arrange for other non-profit agencies to provide services on its behalf; however, the RHS will expect the applicant to provide the overall management necessary to ensure the objectives of the grant are met. Non-profit agencies acting on behalf of the applicant must also meet the eligibility requirements stated above.

Minimum Performance Requirements

(1) Applicants shall conduct outreach to broad-based non-profit organizations, non-profit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local Government, public agencies (such as housing authorities) and other eligible FLH organizations to further the section 514 and 516 FLH programs. Outreach will consist of a minimum of 12 informational presentations to the general public annually to inform them about the section 514 and 516 FLH programs.

(2) Applicants shall conduct at least 12 one-on-one meetings annually with groups who are interested in applying for FLH loans or grants and assist such groups with the loan and grant application process.

(3) Applicants shall assist loan and grant applicants secure funding from other sources for the purpose of leveraging those funds with RHS funds.

(4) Applicants shall provide technical assistance during the development and construction phase of FLH proposals selected for funding.

(5) When submitting a grant proposal, applicants need not identify the geographic location of the places they intend to target for their outreach activities, however, applicants must commit to targeting at least five areas within the grant proposal's region. All targeted areas must be distinct market areas and not be overlapping. At least four of the targeted areas must be in different States. If the proposal is selected for funding, the applicant will be required to consult with each Rural Development State Director in the proposal's region for the purpose of developing their list of targeted areas. When determining which areas to target, consideration will be given to (a) the total number of farmworkers in the area, (b) the number of farmworkers in that area who lack adequate housing, (c) the percentage of the total number of farmworkers that are without adequate housing, and (d) areas which have not recently had a section 514 or 516 loan or grant funded for new construction. In addition, if selected for funding, the applicant will be required to revise their Statement of Work to identify the geographic location of the targeted areas and will submit their revised Statement of Work to the National Office for approval. When submitted for approval, the applicant must also submit a summary of their consultation with the Rural Development State Directors. At grant closing, the revised Statement of Work will be attached to, and become a part of, the grant agreement.

(6) During the grant period, each applicant must submit a minimum number of loan application packages to the Agency for funding consideration. The minimum number shall be the greater of (a) at least nine loan application packages for the Eastern and Western Regions and at least seven for the Central Region or, (b) a total number of loan application packages that is

equal to 70 percent of the number of areas the applicant's proposal committed to targeting. Fractional percentages shall be rounded up to the next whole number. For example, if the applicant's proposal committed to targeting 13 areas, then the applicant must submit at least 10 loan application packages during the grant period (13 areas × 70 percent = 9.1 rounded up to 10). The disbursement of grant funds during the grant period will be contingent upon the applicant making progress in meeting this minimum performance requirement. More than one application package for the same market area will not be considered unless the applicant submits documentation of the need for more than one FLH facility.

(7) Provide training to applicants of FLH loans and grants to assist them in their ability to manage FLH.

IV. Application and Submission Information

The application process will be in two phases; the initial application (or proposal) and the submission of a formal application. Only those proposals that are selected for funding will be invited to submit formal applications. All proposals must include the following:

(1) A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

a. Applicant's name,

b. Applicant's Taxpayer Identification Number,

c. Applicant's address,

d. Applicant's telephone number,

e. Name of applicant's contact person, telephone number, and address,

f. Amount of grant requested,

g. The FLH–TA grant region for which the proposal is submitted (i.e., Eastern, Central, or Western Region), and

h. Applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number and registration in the Central Contractor Registration (CCR) database prior to submitting a pre-application pursuant to 2 CFR 25.200(b). As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via Internet at *http://www.dnb.com/.* Additional information concerning this requirement can be obtained on the Grants.gov Web Site at *http://www.grants.gov.* Similarly, applicants may register for the CCR at *https://uscontractingregistration.com* or by calling 1–877–252–2700. In addition, an entity applicant must maintain registration in the CCR database at all times during which it has an active Federal award or an application or plan under construction by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

i. Awards made under this Notice are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112–55, Division A sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all applicants must complete and include in the pre-application paragraph (A) of this representation, and all corporate applicants also must complete paragraphs (B) and (C) of this representation:

(A) Applicant_____ [insert applicant name] is not_____ (check one) and entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa. Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands.

(B) Applicant_____ [insert applicant name] has_____ has not_____ (check one) been convicted of a felony criminal violation under Federal or state law in the 24 months preceding the date of application. Applicant has_____ has not_____ (check one) had any officer or agent of the Applicant convicted of a felony criminal violation for actions taken on behalf of the Applicant under Federal or State law in the 24 months preceding the date of the signature on the pre-application.

(C) Applicant_____ [insert applicant name] has_____ does not have_____ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(2) A narrative describing the applicant's ability to meet the eligibility requirements stated in this Notice. If the applicant intends to have other agencies working on their behalf, the narrative must identify those agencies and address their ability to meet the stated eligibility requirements.

(3) A detailed Statement of Work covering a 3 year period that contains measurable monthly and annual accomplishments. The applicant's Statement of Work is a critical component of the selection process. The Statement of Work must include an outreach component describing the applicant's activities to inform potentially eligible groups about the section 514 and 516 FLH program. The outreach component must include a schedule of their planned outreach activities and must be included in a manner so that performance can be measured. In addition, the outreach activities must be coordinated with the appropriate RHS State Office and meet the minimum performance requirements as stated in the Scope of Work section of this Notice. The Statement of Work must state *how many* areas the applicant will target for their outreach activities (Note: If selected for funding, the applicant will be required to revise their Statement of Work, after consultation with Rural Development State Directors, to *identify the areas* that will be targeted). The Statement of Work must also include a component for training organizations on the application process and the long-term management of FLH. The Statement of Work will also describe the applicant's plans to access other funding for the development and construction of FLH and their experience in obtaining such funding. The Statement of Work must describe any duties or activities that will be performed by other agencies on behalf of the applicant.

(4) An organizational plan that includes a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of employee duties to achieve the objectives of the grant program.

(5) Organizational documents and financial statements to evidence the applicant's status as a properly organized private or public non-profit agency and the financial ability to carry out the objectives of the grant program. If other agencies will be working on

behalf of the applicant, working agreements between the applicant and those agencies must be submitted as part of the proposal and any associated cost must be included in the applicant's budget. Organizational and financial statements must also be submitted as part of the application for any agencies that will be working on behalf of the applicant to document the eligibility of those organizations.

(6) A detailed budget plan projecting the monthly and annual expenses the applicant will incur. Costs will be limited to those that are allowed under 7 CFR parts 3015, 3016, and 3019.

(7) To insure that funds are equitably distributed and that there is no duplication of efforts on related projects, all applicants are to submit a list of projects they are currently involved with, whether publicly or privately supported, that are or may be, related to the objectives of this grant. In addition, the same disclosure must be provided for any agencies that will be working on behalf of the applicant.

(8) The applicant must include a narrative describing its knowledge, demonstrated ability, or practical experience in providing training and technical assistance to applicants of loans or grants for the development of multi-family or farmworker housing. The applicant must identify the type of assistance that was applied for (loan or grant, tax credits, leveraged funding, etc.), the number of times they have provided such assistance, and the success ratio of their applications. In addition, information must be provided concerning the number of housing units, their size, their design, and the amount of grant and loan funds that were secured.

(9) A narrative describing the applicant's knowledge and demonstrated ability in estimating development and construction costs of multi-family or farm labor housing and for obtaining the necessary permits and clearances.

(10) A narrative describing the applicant's ability and experience in overcoming community opposition to FLH and describing the methods and techniques that they will use to overcome any such opposition, should it occur.

(11) A separate one-page information sheet listing each of the ''Application Scoring Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria.

V. Application Review Information

The initial application (or proposal) evaluation process designed for this RFP will consist of two phases. The first phase will evaluate the applicant's Statement of Work and the degree to which it sets forth measurable objectives that are consistent with the objectives of FLH–TA grant program. The second phase will evaluate the applicant's knowledge and ability to provide the management necessary for carrying out a FLH–TA grant program. Proposals will only compete against other proposals within the same region. Selection points will be awarded as follows:

Phase I—Statement of Work

The Statement of Work will be evaluated to determine the degree to which it outlines efficient and measurable monthly and annual outcomes as follows:

a. The minimum performance requirements of this Notice require that the applicant commit to targeting at least five areas (at least four of which are in different States). The more areas the applicant commits to targeting, the more scoring points they will be awarded. As stated earlier in this Notice, the more areas the applicant commits to the more loan application packages must be submitted. The amount will be established in the Statement of Work. The number of areas within the region that the applicant has committed to targeting for outreach activities:

(1) 5–7 targeted areas: 0 points
(2) 8 targeted areas: 5 points
(3) 9–10 targeted areas: 10 points
(4) 11–12 targeted areas: 15 points
(5) 13 or more areas: 20 points

b. RHS wants the applicant to cover as much of the grant region as possible. RHS does not want the applicant's efforts to be concentrated in a limited number of States. For this reason, additional points will be awarded to grant proposals that target areas in more than four States (the minimum requirement is four). Applications only compete within their grant region. The grant proposal commits to targeting areas in the following number of States:

(1) 4 States: 0 points
(2) 5 States: 5 points
(3) 6 States: 10 points
(4) 7 States: 15 points
(5) More than 7 States: 20 points

Phase II—Project Management

a. The number of successful multi-family or FLH loan or grant applications the applicant entity has assisted in developing and packaging:

(1) 0–5 applications: 0 points
(2) 6–10 applications: 10 points
(3) 11–15 applications: 20 points
(4) 16 or more applications: 30 points

b. The number of groups seeking loans or grants for the development of multi-family or FLH projects that the applicant entity has provided training and technical assistance.

(1) 0–5 groups: 0 points
(2) 6–10 groups: 5 points
(3) 11–15 groups: 10 points
(4) 16 or more groups: 15 points

c. The number of multi-family or FLH projects for which the applicant entity has assisted in estimating development and construction costs and obtaining the necessary permits and clearances:

(1) 0–5 projects: 0 points
(2) 6–10 projects: 5 points
(3) 11–15 projects: 10 points
(4) 16 or more projects: 15 points

d. The number of times the applicant entity has encountered community opposition *and* was able to overcome that opposition so that farm labor housing was successfully developed.

(1) 0–2 times: 0 points
(2) 2–5 times: 5 points
(3) 6–10 times: 10 points
(4) 11 or more times: 15 points

e. The number of times the applicant entity has been able to leverage funding from two or more sources for the development of a multi-family or FLH project.

(1) 0–5 times: 0 points
(2) 6–10 times: 5 points
(3) 11–15 times: 10 points
(4) 16 or more times: 15 points

f. The number of FLH projects that the applicant entity has assisted with on-going management (i.e., rent-up, maintenance, etc.):

(1) 0–5 FLH projects: 0 points
(2) 6–10 FLH projects: 5 points
(3) 11–15 FLH projects: 10 points
(4) 16 or more FLH projects: 15 points

The National Office will rank all pre-applications by region and distribute funds to the regions in rank order and within funding limits.

Tie Breakers—In the event two or more proposals within a region are scored with an equal amount of points, selections will be made in the following order:

1. If an applicant has already had a proposal selected, their proposal will not be selected.

2. If all or none of the applicants with equivalent scores have already had a proposal selected, the lowest cost proposal will be selected.

3. If two or more proposals have equivalent scores, all or none of the applicants have already had a proposal

selected, and the cost is the same, a proposal will be selected by a random lottery drawing.

RHS will notify all applicants whether their pre-applications have been accepted or rejected and provide appeal rights under 7 CFR part 11, as appropriate.

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0181.

Equal Opportunity and Non-Discrimination Requirements

The U.S. Department of Agriculture prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., STOP 9410, Washington, DC 20250–9410, or call toll free at (866) 632–9992 (English) or (800) 877–8339 (TDD) or (866) 377–8642 (English Federal—Relay) or (800) 845–6136 (Spanish Federal—Relay). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: August 28, 2012.

Tammye Trevino,

Administrator, Rural Housing Service.

RHS may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this grant agreement or RHS regulations related hereto. The grantee may appeal adverse decisions in accordance with RHS's appeal procedures contained in 7 CFR part 11.

In consideration of said grant by RHS to the grantee, to be made pursuant to section 516 of title V of the Housing Act of 1949, the grantee will provide such a program in accordance with the terms of this grant agreement and applicable regulations.

PART A Definitions

1. ''Beginning date'' means the date this agreement is executed by both parties and costs can be incurred.

2. ''Ending date'' means the date this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.

3. ''Disallowed costs'' are those charges to a grant which RHS determines cannot be authorized in accordance with applicable Federal cost principles contained in 7 CFR parts 3015, 3016 and 3019, as appropriate.

4. ''FLH–TA'' means Farm Labor Housing Technical Assistance, the purpose for which grant funds are awarded under this agreement.

5. ''Grant closeout'' is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

6. ''RHS'' means the Rural Housing Service, an agency of the United States Department of Agriculture.

7. ''Termination'' of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

PART B Terms of Agreement

RHS and the grantee agree that:

1. All grant activities shall be limited to those authorized by this grant agreement and section 516 of title V of the Housing Act of 1949.

2. This agreement shall be effective when executed by both parties.

3. The FLH–TA grant activities approved by RHS shall commence and be completed by the date indicated above, unless terminated under part B, paragraph 18 of this grant agreement, or extended by execution of the attached ''Amendment'' by both parties.

4. The grantee shall carry out the FLH–TA grant activities and processes as described in the approved statement of work which is attached to, and made a part of, this grant agreement. The Grantee will be bound by the activities and processes contained in the statement of work and the further conditions contained in this grant agreement. If the statement of work is inconsistent with this grant agreement, then the latter will govern. A change of any activities and processes must be in writing and must be signed by the approval official.

5. The grantee shall use grant funds only for the purposes and activities approved by RHS in the FLH–TA grant budget. Any uses not provided for in the approved budget must be approved in writing by RHS in advance.

6. If the grantee is a private non-profit corporation, expenses charged for travel or per diem will not exceed the rates paid to Federal employees or (if lower) an amount authorized by the grantee for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the RHS Federal employee rates will be the maximum allowed.

7. Grant funds will not be used:

(a) To pay obligations incurred before the beginning date or after the ending date of this agreement;

(b) For any entertainment purposes;

(c) To pay for any capital assets, the purchase of real estate or vehicles, the improvement or renovation of the grantee's office space, or for the repair or maintenance of privately owned vehicles;

(d) For any other purpose prohibited in 7 CFR 3015, 3016 and 3019, as applicable;

(e) For administrative expenses exceeding 20 percent of the FLH–TA grant funds; or

(f) For purposes other than to encourage the development of farm labor housing.

8. The grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. The disbursal of grants will be governed as follows:

(a) In accordance with 31 CFR part 205, grant funds will be provided by RHS as cash advances on an as needed basis not to exceed one advance every 30 days. The advances will be made by direct Treasury check to the grantee. In addition, the grantee must submit Standard Form (SF) 272, ''Federal Cash Transactions Report,'' each time an advance of funds is made. This report shall be used by RHS to monitor cash advances made to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as required by 7 CFR parts 3015, 3016, and 3019, as applicable.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's statement of work and budget

and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the RHS and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within 7 calendar days from the date of the Treasury check; or (ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to RHS that all officers of the grantee's organization authorized to receive or disburse Federal funds are covered by fidelity bonds in an amount of at least the grant amount to protect RHS's interests.

10. The grantee will submit performance, financial, and annual reports as required by 7 CFR parts 3015, 3016, and 3019, as applicable, to the appropriate RHS office. These reports must be reconciled to the grantee's accounting records.

(a) As needed, but not more frequently than once every 30 calendar days, submit an original and two copies of SF–270, ''Request for Advance or Reimbursement.'' In addition, the grantee must submit a SF–272, each time an advance of funds is made. This report shall be used by RHS to monitor cash advances made to the grantee.

(b) Quarterly reports will be submitted within 15 days after the end of each calendar quarter. Quarterly reports shall consist of an original and one copy of SF–425, ''Federal Financial Report,'' and a quarterly performance report summarizing the grantee's activities and accomplishments for the prior quarter. Item 10, g (total program outlays) of the SF–425, will be less any rebates, refunds, or other discounts. The quarterly performance report will provide a summary of the grantee's activities for the prior quarter and their progress in accomplishing the tasks described in the grantee's statement of work. The quarterly report will also inform RHS of any problems or difficulties the grantee is experiencing (i.e., locating sites, finding feasible markets, gaining public support, etc.). The reports will be reviewed by RHS for the purpose of evaluating whether the grantee is accomplishing the objectives of the grant and whether RHS can assist the grantee in any manner. Quarterly reports shall be submitted to a designated official at the RHS National Office, with a copy of the report to each State Director within the FLH–TA grant region where the grantee is operating.

(c) Within 90 days after the termination or expiration of the grant agreement, an original and two copies of SF–425, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee under FLH–TA grants. Final reports may serve as the last quarterly report.

(d) The RHS may change the format or process of the monthly and quarterly activities and accomplishment reports during the performance of the agreement.

11. In accordance with Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments (available in any RHS office), compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds $100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval of RHS.

13. The results of the program assisted by grant funds may be published by the grantee without prior review by RHS, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, as amended, and that five copies of each such publication are furnished to RHS.

14. The grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingency fee.

15. No person in the United States shall, on the grounds of race, religion, color, sex, familial status, age, national origin, or disability, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of RHS contained in 7 CFR part 1901, subpart E.

16. In all hiring or employment made possible by or resulting from this grant:

(a) The grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, familial status, age, national origin, or disability,

(b) The grantee will ensure that employees are treated without regard to their race, religion, color, sex, familial status, age, national origin, or disability. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship, and

(c) In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the ''Equal Employment Clause'' as specified by Form RD 400–1, *''Equal Opportunity Agreement.''*

17. The grantee accepts responsibility for accomplishing the FLH–TA grant program as submitted and included in its preapplication and application, including its statement of work. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to RHS on the status of grantee's FLH–TA grant programs, projects, related activities, and problems.

(c) Inform RHS as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time schedules required and any RHS assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. The grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to RHS any uncommitted balance of grant funds.

(ii) The grantee will furnish to RHS within 90 calendar days after the date of completion of the grant, SF–425 and all financial, performance, and other reports required as a condition of the grant, including a final audit report, as required by 7 CFR part 3015, 3016, and 3019, as applicable. In accordance with 7 CFR part 3015 and OMB Circular A–

133, audits must be conducted in accordance with generally accepted government auditing standards.

(iii) The grantee shall account for any property acquired with FLH–TA grant funds or otherwise received from RHS.

(iv) After the grant closeout, RHS will recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this grant agreement, the Administrator (or his or her designee) can, on reasonable notice, suspend the grant pending corrective action or terminate the grant in accordance with part B, paragraph 18(c) of this grant agreement. In such instances, RHS may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. RHS will withhold further advances and grantees are prohibited from further use of grant funds, pending corrective action.

(c) Grant termination will be based on the following:

(i) Termination for cause. This grant may be terminated in whole, or in part, at any time before the date of completion, whenever RHS determines that the grantee has failed to comply with the terms of this agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by RHS or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by RHS in connection with any RHS programs.

(F) Failure to maintain an accounting system acceptable to RHS.

(ii) Termination for convenience. RHS or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) RHS shall notify the grantee in writing of the determination and the reasons for and the effective date of the suspension or termination. Except for termination for convenience, grantees have the opportunity to appeal a suspension or termination in accordance with 7 CFR part 11.

19. Upon any default under its representations or agreements contained in this instrument, the grantee, at the option and demand of RHS, will repay to RHS forthwith the grant funds received with interest at the rate of 5 percent per annum from the date of the default. The provisions of this grant agreement may be enforced by RHS, at its option and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this grant agreement or by such other proceedings in law or equity, in either Federal or state courts, as may be deemed necessary by RHS to assure compliance with the provisions of this grant agreement and the laws and regulations under which this grant is made.

20. Extension of this grant agreement, modifications of the statement of work, or changes in the grantee's budget may be approved by RHS provided, in RHS's opinion, the extension or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the statement of work during the period of the extension and/or modifications.

21. The provisions of 7 CFR parts 3015, 3016, and 3019, as applicable, are incorporated herein and made a part hereof by reference.

PART C Grantee Agrees

1. To comply with property management standards for expendable and nonexpendable personal property established by 7 CFR parts 3015, 3016, and 3019.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on a cash basis. The financial management system shall include a tracking system to insure that all program income, including loan repayments, are used properly. The standards for financial management systems are contained in OMB Circular A–110 and 7 CFR part 3015.

(b) Records which identify adequately the source and application of funds for grant supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after the submission of the final performance report, in accordance with part B, paragraph 10 (c) of this grant agreement, except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the 3-year period, the records shall be retained until all litigation, claims, audits, or investigative findings involving the records have been resolved.

(b) For records for nonexpendable property acquired by RHS, the 3-year retention requirement is not applicable.

(c) When records are transferred to or maintained by RHS, the 3-year retention requirement is not applicable.

(d) Microfilm copies may be substituted in lieu of original records. RHS and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by RHS concerning the grantee's actions in soliciting citizen participation in the applications process, including published notices of public meetings, actual Public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by RHS or acquired wholly or in part with FLH–TA grant funds without the written consent of RHS.

6. To provide RHS with such periodic reports of grantee operations as may be required by authorized representatives of RHS.

7. To execute Forms RD 400–1 and RD 400–4, ''*Assurance Agreement,*'' and to execute any other agreements required by RHS to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000, a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 1857(h). Violations shall be reported to RHS and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a public-held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the grantee shall relinquish any and all copyrights and privileges to the materials developed under this grant; such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain a notice and be identified by language to the following effect: ''The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

12. That the grantee shall abide by the policies contained in 7 CFR parts 3015, 3016, or 3019, as applicable, which provide standards for use by grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

13. That it is understood and agreed that any assistance granted under this grant agreement will be administered subject to the limitations of section 516 of Title V of the Housing Act of 1949 and that all rights granted to RHS herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect RHS's financial interest.

14. That the grantee will adopt a standard of conduct that provides that, if an employee, officer, or agency of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (i.e., partnerships, corporations, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors, or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving FLH–TA grant assistance.

15. That the grantee will be in compliance with and provide the necessary forms concerning the Debarment and Suspension and the Drug-free Workplace requirements.

PART D RHS Agrees

1. That it will assist the grantee, within available appropriations, with such technical and management assistance as needed in coordinating the statement of work with local officials, comprehensive plans, and any State or area plans for improving housing for farmworkers.

2. That at its sole discretion, RHS may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of the grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as the grantor may determine to be:

(a) Advisable to further the purposes of the grant or to protect RHS's financial interests therein; and

(b) Consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and RHS's regulations.

[FR Doc. 2012–21885 Filed 9–5–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Survey of Business Owners.

OMB Control Number: 0607–0943.

Form Number(s): SBO–1, SBO–1S, SBO–2, SBO–2S.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 149,167.

Number of Respondents: 875,000.

Average Hours per Response: SBO–1 = 12 minutes, SBO–2 = 8 minutes.

Needs and Uses: The 2012 Survey of Business Owners and Self-Employed Persons (SBO) will provide the only comprehensive, regularly collected source of information on selected economic and demographic characteristics for businesses and business owners by gender, ethnicity, race, and veteran status. It is conducted as part of the economic census program, which is required by law to be taken every five years.

The survey was initiated following an Executive Order signed March 5, 1969, by President Richard Nixon, which directed the Secretary of Commerce to ''Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting the establishment and successful operation of minority business enterprise.'' This project was later incorporated into the 1972 Economic Census and has been conducted on a quinquennial basis as part of the economic census ever since.

Government program officials, industry organization leaders, economic and social analysts, and business entrepreneurs routinely use the SBO statistics. Examples of data use include those by:

- The Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) to assess business assistance needs and allocate available program resources.
- Local government commissions on small and disadvantaged businesses to establish and evaluate contract procurement practices.
- Federal, state and local government agencies as a framework for planning, directing and assessing programs that promote the activities of disadvantaged groups.
- A national women-owned business trade association to assess women-owned businesses by industry and area, and educate other industry associations, corporations and government entities.
- Consultants and researchers to analyze long-term economic and demographic shifts, and differences in ownership and performance among geographic areas.
- Individual business owners to analyze their operations in comparison to similar firms, compute their market share, and assess their growth and future prospects.

Businesses which reported any business activity on any one of the following Internal Revenue Service (IRS) tax forms will be eligible for survey selection: 1040 (Schedule C), ''Profit or Loss from Business'' (Sole Proprietorship); 1065, ''U.S. Return of Partnership Income''; 941, ''Employer's Quarterly Federal Tax Return''; 944 ''Employer's Annual Federal Tax Return'', or any one of the 1120 corporate tax forms.

The 2012 SBO–1 and SBO–2 questionnaires will be mailed in two phases from our processing headquarters in Jeffersonville, Indiana. Approximately 850,000 questionnaires for partnerships and corporations,

which were in business in 2011, will be mailed out in the first phase scheduled to begin June 2013, with two follow-up mailings at six-week intervals. Closeout of this phase of the mailout operations is scheduled for October 2013. The second phase mailout of approximately 900,000 questionnaires to sole proprietorships and new partnerships and corporations operating in 2012 is scheduled to begin in May 2014, with two follow-ups at six-week intervals. Closeout of mailout operations is scheduled for August 2014. Upon closeout of the survey, the response data will be edited and reviewed.

For the 2012 SBO, significant changes have been made to the program. These changes include the following:

- To reduce the SBO sample size, mailing and processing costs, and respondent burden, the Census Bureau is expanding its use of direct data substitution from existing sources, such as the American Community Survey (ACS) and the Decennial Census.
- Select businesses will be mailed the new 2012 SBO–2 short form with 39 fewer questions to answer than the 2012 SBO–1 long form.
- Spanish-language paper versions of the SBO–1 and SBO–2 forms, respectively designated as the SBO–1S and SBO–2S forms, will be available upon request.
- The first eight questions on the 2007 SBO–1 form have been reorganized into three questions on the 2012 SBO–1 and SBO–2 forms to improve navigation through these forms.
- To eliminate confusion for business owners born to American citizens overseas, the foreign-born question that asked if the owner was born in the United States has been replaced by a new question that asks if the owner was born a citizen of the United States.
- The veteran question has been revised and expanded to collect information on whether the veteran was service-disabled, served on active duty or as a reservist during the survey year, served on active duty at any time, and served on active duty after September 11, 2001. The revised and expanded wording for the veteran categories and the collection of the additional service characteristics reflects input received during consultations with many leaders in the veteran community. Input was received from, among others, the Department of Defense, the Veterans Administration, the Bureau of Labor Statistics, the U.S. House of Representatives Committee on Veterans' Affairs, the Senate Committee on Veterans' Affairs, the Small Business Administration, the American Legion, the Veterans Entrepreneurship Task Force (VET-Force), and the American Veterans (AMVETS).
- Interest from researchers on the possible correlation between intellectual property rights and business success led to the addition of a question on whether the business owned a copyright, trademark, granted patent, or a pending patent.

Using principles of questionnaire design and methodological research, cognitive interviews were completed with eighty-three respondents in three rounds of interviews. Upon completion of each round of interviews, the interview team met, decided on the changes to the form, and made revisions based on the findings and recommendations.

The survey collects data on the gender, ethnicity, race, and veteran status for up to four persons owning the majority of rights, equity, or interest in the business. These data are needed to evaluate the extent and growth of business ownership by women, minorities, and veterans in order to provide a framework for assessing and directing federal, state, and local government programs designed to promote the activities of disadvantaged groups.

The SBA and the MBDA use the SBO data when allocating resources for their business assistance programs.

The Census Bureau merged its 2007 SBO data product with its 2007 Profile of U.S. Exporting Companies data product to create a first-ever report that provides the ownership characteristics of classifiable U.S. exporters by gender, ethnicity, race, and veteran status, and their export values by country. This report is planned again for the 2012 data.

The data are also widely used by private firms and individuals to evaluate their own businesses and markets and to write business plans and loan application letters, by the media for news stories, by researchers and academia for determining firm characteristics, and by the legal profession in evaluating the concentration of minority businesses in particular industries and/or geographic areas.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal governments.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code (USC), Sections 131, 193, and 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: August 31, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–21932 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2013 Survey of Income and Program Participation, Event History Calendar Field Test.

OMB Control Number: 0607–0957.

Form Number(s): SIPP–EHC 105(L)2013–Director's Letter; SIPP–EHC–105(L)(SP) 2013—Director's Letter Spanish; SIPP–EHC 4006A Brochure; SIPP/CAPI Automated Instrument.

Type of Request: Revision of a currently approved collection.

Burden Hours: 6,300.

Number of Respondents: 6,300.

Average Hours per Response: 1 hour.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the 2013 Survey of Income and Program Participation Event History Calendar (SIPP–EHC) Field Test.

The Census Bureau's SIPP–EHC computer-assisted personal interviewing (CAPI) will use an Event History Calendar (EHC) interviewing method and a 12-month, calendar-year reference period in place of the current SIPP questionnaire approach that uses a sliding 4-month reference period. The Census Bureau also plans to use Computer Assisted Recorded Interview (CARI) technology for a sample of the respondents during the 2013 SIPP–EHC. The Census Bureau is re-engineering the SIPP to accomplish several goals

including re-engineering the collection instrument and processing system, development of the EHC in the instrument, use of the administrative records data where feasible, and increased stakeholder interaction.

The main objective of the SIPP has been, and continues to be, to provide accurate and comprehensive information about the income and program participation of individuals and households in the United States. The survey's mission is to provide a nationally representative sample for evaluating: (1) Annual and sub-annual income dynamics, (2) movements into and out of government transfer programs, (3) family and social context of individuals and households, and (4) interactions among these items. A major use of the SIPP has been to evaluate the use of and eligibility for government programs and to analyze the impacts of modifications to those programs. The re-engineering of SIPP pursues these objectives in the context of several goals including cost reduction, improved accuracy, increased relevance and timeliness, reduced burden on respondents, and increased accessibility. The 2013 SIPP–EHC will collect detailed information on cash and non-cash income (including participation in government transfer programs) once per year.

A key component of the re-engineering process involves the proposed shift from the every-four-month data collection schedule of traditional SIPP to an annual data collection schedule for the re-engineered survey. To accomplish this shift with minimal impact on data quality, the Census Bureau proposes employing the use of an event history calendar to gather SIPP data. The 2013 SIPP–EHC will re-interview respondents interviewed in 2012, collecting data for the previous calendar year as the reference period. The content of the 2013 SIPP–EHC will closely match that of the 2012 SIPP–EHC. The SIPP–EHC design does not contain freestanding topical modules as in the current production SIPP instrument; however, a portion of traditional SIPP topical module content is integrated into the main body of the 2013 SIPP–EHC interview. The EHC allows recording dates of events and spells of coverage and should provide measures of monthly transitions of program receipt and coverage, labor force transitions, health insurance transitions, and others. The 2013 SIPP–EHC will be the second test using dependent data in conjunction with calendar methods to reduce burden and improve quality, and the first opportunity to re-engage respondents who either refused to participate or could not be located for the 2012 SIPP–EHC wave 2 interviews. Further, the 2013 SIPP–EHC will be the final dry-run prior to administration of the SIPP–EHC as the production SIPP instrument in early CY 2014.

During the field period for the 2012 SIPP–EHC, a separate sample was interviewed using the same instrument, but with Computer Assisted Recorded Interview (CARI) technology implemented. For a sample of the respondents during the 2013 SIPP–EHC audio recordings will again be used. The Census Bureau is using CARI during data collection to capture audio along with screen images and data values for responses during the computer-assisted personal interviews (CAPI). With the respondent's consent, a portion of each interview is recorded unobtrusively and both the sound file and screen images are returned with the response data to a central location for coding. The CARI technology will again be used in conjunction with the 2013 SIPP–EHC. Portions of both the 2012 wave 2 SIPP–EHC and 2012 wave 1 SIPP–EHC (CARI) samples will be recorded as part of the 2013 SIPP–EHC administration. In 2012 the CARI respondents were first interviewed and recorded as a separate sample utilizing a CARI enabled version of the 2012 SIPP–EHC instrument. In 2013, the CARI sample will be combined with the SIPP–EHC sample, which will test the capability of the SIPP–EHC instrument to perform multiple paths during the same interview period. In 2013, the SIPP–EHC CARI sample is a Wave 2 interview, while the 2012 SIPP–EHC sample will be in its third wave. The CARI recordings will not be limited to only the previously recorded cases; instead, the sample being recorded in 2013 will contain both previously recorded cases and some Wave 3 SIPP–EHC cases. This is a critical evaluation, as evidence from external surveys (Panel Study of Income Dynamics—PSID) suggests that simply asking the consent question could be associated with a significant increase in survey length. External researchers at the Institute for Social Research at the University of Michigan suspect that improved FR adherence to protocol is one of the sources for the longer interviews. Additionally, we need information on the association between CARI, interview length, and interview quality.

As a quality assurance tool, the recorded portions of the interview allow quality assurance analysts to evaluate the likelihood that the exchange between the field representative and respondent is authentic and follows critical survey protocol as defined by the sponsor and based on best practices. The 2013 SIPP–EHC field test instrument will utilize the CARI Interactive Data Access System (CARI System), an innovative, integrated, multifaceted monitoring system that features a configurable web-based interface for behavior coding, quality assurance, and coaching. This system assists in coding interviews for measuring question and interviewer performance and the interaction between interviewers and respondents.

The 2013 SIPP–EHC Field Test will be conducted in all 6 Census Regional Offices from January through March of 2013. Approximately 3,000 households are expected to be interviewed for the 2013 SIPP–EHC field test, which is comprised of approximately 2,000 cases returning for a third wave from the 2012 SIPP–EHC and approximately 1,000 cases returning for a second wave from the 2012 SIPP–EHC CARI. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 6,300 person-level interviews in the field test. Interviews take one hour on average. The 2013 SIPP–EHC will not be using the re-contact experiment previously used in the 2012 SIPP–EHC.

The 2013 SIPP–EHC Field Test will continue the EHC methodology implemented in the 2012 Field Test instrument. The EHC is intended to help respondents recall information in a more natural ''autobiographical'' manner by using life events as triggers to recall other economic events. For example, a residence change can in many cases occur contemporaneously with a change in employment. The entire process of compiling the calendar focuses, by its nature, on consistency and sequential order of events, and attempts to correct for otherwise missing data. For example, unemployed respondents may undertake a lengthy job search before becoming employed.

The 2013 SIPP–EHC Field Test instrument will be evaluated in several domains including field implementation issues and data comparability vis-à-vis the 2008 SIPP Panel and administrative records. Distributional characteristics such as the percent of persons receiving TANF, Food Stamps, Medicare, who are working, who are enrolled in school, or who have health insurance coverage reported in the EHC will be compared to the same distributions from the 2008 SIPP Panel. The primary focus will be to examine the quality of data that the new instrument yields for low-income programs relative to the current SIPP and other administrative sources. The

field test sample is focused in low-income areas in order to increase the ''hit rate'' of households likely to participate in government programs.

Results from the 2010–2013 Field Tests and the 2008 SIPP Panel will be used to inform final decisions regarding the design, content, and implementation of the SIPP–EHC for its production beginning in 2014.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: August 31, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–21947 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2013 Census Test

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before November 5, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jason Machowski, Census Bureau, HQ–3H468F, Washington, DC 20233; (301) 763–4173 (or via email at *jason.d.machowski@census.gov*).

SUPPLEMENTARY INFORMATION

I. Abstract

During the years preceding the 2020 Census, the Census Bureau will continue to pursue its commitment to reducing the costs of conducting a decennial census, while maintaining the level of quality achieved for previous ones. A primary decennial census cost driver is the employment of a large temporary staff to collect data from members of the public from which the Census Bureau received no reply via initially offered response options. Increasing the number of people who take advantage of self-response options (such as completing a paper questionnaire and mailing it back to the Census Bureau) can contribute to a less costly census with high-quality results.

The 2013 Census Test will give the Census Bureau an opportunity to investigate a variety of different strategies and methods aimed at increasing the use of self-response options in a decennial census. An overall objective of the Census Bureau is to increase participation by making it easier for respondents to know about and to respond to the decennial census. As part of this data collection, the Census Bureau will test different strategies for contacting the public to notify and to remind them about the decennial census. In addition, the Census Bureau will offer multiple modes to self-respond.

The 2013 Census Test will also encompass research in additional key areas. One area pertains to testing different field data collection procedures for obtaining data from those who do not self-respond to the decennial census. Another area involves collecting data on attitudes regarding contact strategies, response modes, and other proposed methods of data collection. The Census Bureau will recontact a sample of those who self-responded, those who responded to a Census Bureau employee, and those who did not respond at all. The data collection to obtain respondent attitudes will be conducted by telephone.

The results from the 2013 Census Test will inform Census Bureau planners who are guiding the design of additional 2020 Decennial Census research on the topics summarized briefly above and discussed in more detail below.

Contact Strategies—In the past, the Census Bureau sent a letter to most areas of the country alerting households that a census questionnaire was on its way. Then the Census Bureau delivered a questionnaire, which contained a unique Census ID. The Census Bureau also sent a follow-up mailing in the form of a postcard to remind respondents to return their questionnaires, if they had not already done so.

For this test, the Census Bureau is intending to use multiple contact modes to notify respondents to participate in the census, to provide them instructions for completing a census questionnaire, and to remind them to respond. In addition to mail, the Census Bureau is considering contacting respondents by email and text messages using contact information purchased from commercial data vendors. In advance of this test, the Census Bureau will address any policy issues surrounding the use of email and text messages.

The email and text messages will contain an interactive link to a Census Bureau Internet site that respondents can click on to respond to the census. The Census Bureau plans to embed into the link an identifier that is unique to the respondent and their notification mode (for example, the same respondent with both an email and text account may have a unique identifier for each one). This identifier will allow the Census Bureau to measure the effectiveness of each mode of notification and to determine any response differences by demographic group or geographic area (such as urban, suburban, and rural).

In addition to altering the mode of contact, the Census Bureau will vary both the content of messages sent and the timing of when respondents will receive them. This testing will help the Census Bureau to develop effectively worded messages and delivery schedules that are optimized for each mode of contact. The Census Bureau will measure the effectiveness of differing mode, message content, and time of delivery on the response rate. This analysis will include breakdowns by various demographic populations.

Self-Response Options—Respondents will initially have the option to respond to this test via the Internet, or through telephone questionnaire assistance using a toll-free number and speaking with an operator. The Census Bureau

will later mail a paper questionnaire to all households that have not responded to the notifications described above by completing their census questionnaire on-line or by telephone by a pre-determined date. The Census Bureau will measure the response rates for the different self-response options to determine if there is an increase in self-response and a reduction in the workload to collect data from nonrespondents and its associated costs.

Field Follow-up—A sample of households that do not self-respond by a yet to be determined date will have a Census Bureau employee collect their data during an operation referred to as Nonresponse Followup (NRFU). The Census Bureau will hire temporary staff as needed to perform this operation.

The current NRFU procedure is to initially make a personal visit to an address to conduct an interview. If no one comes to the door during this visit, NRFU interviewers leave a notice informing the resident(s) of the interview attempt. Interviewers can leave a telephone number on the notice of visit encouraging the resident to call them back. If the resident calls an interviewer or an interviewer obtains a telephone number for a household (from a neighbor, for example), the interviewer can conduct the interview over the telephone instead of making another personal visit.

As part of the overall effort to reduce the operational cost of NRFU, this test will explore alternatives to the current NRFU procedures for contacting households. For example, the Census Bureau will experiment with the number of attempts to contact each household before allowing the field staff to obtain information from proxy respondents. Doing so will supplement research already done on this topic and will help planners to determine the optimal number of in-person visits and telephone contacts to make during this operation. The Census Bureau also wishes to learn whether altering the way interviewers contact a household for the first time (that is, by telephone instead of by personal visit) results in a more efficient way to conduct NRFU (telephone contact is considerably less expensive than personal visit). To explore this alternative, the Census Bureau plans to provide field staff with telephone numbers from commercial data vendors for addresses in their workload, so they can first contact respondents using the telephone rather than making the first contact a personal visit.

The Census Bureau will also test different notification strategies and messages that the census staff can leave at the household. One strategy is to leave instructions for the household on how to use the Internet to submit responses to the census. Obtaining an Internet response in this type of a scenario can save the expense associated with census staff making a return visit (or a telephone contact).

The Census Bureau will use the newly devised mobile computing devices to conduct interviews and will enter the responses into the device rather than recording them on paper questionnaires. The mobile computing device can automate manual tasks such as managing the field staff work assignment. The Census Bureau expects to use the mobile computing device to collect a more complete and accurate recording of attempts to complete an interview than has been possible in the past with only paper questionnaires. Obtaining better data on the actual number of contact attempts will help planners to develop future contact strategies. In addition, the Census Bureau may allow respondents to self-respond directly on the mobile computing device during a personal visit.

Attitudinal Survey—The Census Bureau will recontact a sample of respondents and nonrespondents by telephone in a follow-up survey to explore attitudes regarding contact modes, response modes, use of administrative records to collect data, and other proposed methods of data collection. The Census Bureau will notify potential survey participants (at the time they self-respond or when they complete a NRFU interview) that they may be recontacted via telephone for a survey about their experience.

II. Method of Collection

The Census Bureau will select a sample of up to 160,000 housing addresses for the 2013 Census Test. The majority of the addresses (approximately 60 percent) will be located in several different geographic test sites (locations to be determined). The Census Bureau will attempt to select geographic test sites that comprise urban, suburban, and rural areas as well as contain a diversity of socio-economic populations. However, budget limitations may affect the final selection. Approximately 40 percent of these addresses will be randomly selected from a national sample. Current plans do not target Tribal sites and group quarters addresses for this test due to limitations of sample size and budget. The Census Bureau estimates a 45 percent self-response rate overall. The Nonresponse Followup workload will be no more than 40,000 household addresses in the geographic test sites due to budget limitations. Of the 40,000 addresses, the Census Bureau will recontact approximately five percent for purposes of quality assurance.

The sample size for the attitudinal survey will be no more than 50,000 households comprised of 25,000 respondents and 25,000 nonrespondents. The sample will be drawn from a cross section of the national sample and the different geographic test sites. In order to reduce costs, the quality assurance sample will be drawn from the same nonrespondents sampled for the attitudinal survey. During the attitudinal survey, we will ask this quality assurance sample if the NRFU interviewer visited the household. The Census Bureau estimates that it will take 10 minutes to complete this additional survey for respondents and 12 minutes to complete the survey for nonrespondents.

In general, the 2010 Census Questionnaire will be the basis of the questions asked during this test. While the question topics will remain the same, the Census Bureau may revise question wording based upon further research and testing, such as results from the 2012 National Census Test (OMB 0607–0970). The Census Bureau estimates that it will take the average household 10 minutes to complete the questionnaire. It includes probes (such as, are there any college students listed) that attempt to find people not initially listed on the housing unit roster and people that have multiple residences. The Census Bureau plans to identify housing units that are more likely to answer positively to each probe and to change the order of the probes in the non-paper questionnaires, so the most relevant probe is asked first for that housing unit. In addition, the questionnaire may need modification based on mode (Internet, or Computer Assisted Telephone Interviewing (CATI)) to improve the flow of the wording. The Census Bureau will design the form for viewing on different Internet, CATI, and mobile computing device platforms used by the field staff (sometimes referred to as Computer Assisted Personal Interviewing, or CAPI).

All households in the sample will initially receive a notification to participate in the 2013 Census Test by email or letter sent in the mail. Reminder notifications will be sent by several methods: email, text message, postcard in the mail, or letter in the mail. The exact content and timing of the notifications are still under consideration. Respondents will have

the option to self-respond to this test initially using the Internet or telephone assistance. If the respondents do not respond using Internet or telephone by a date to be determined, the Census Bureau will mail a paper questionnaire to those households. This follow-up contact is the only way that a respondent will receive a paper questionnaire in this test.

For a sample of households that do not self-respond, the Census Bureau will conduct a Nonresponse Followup (NRFU) operation. The Census Bureau will use mobile computing devices to conduct interviews and will enter responses into the device. The Census Bureau will also recontact some respondents as part of quality assurance activities of its field staff.

Finally, the Census Bureau will conduct a follow-up telephone survey for a sample of respondents and nonrespondents to explore attitudes regarding contact modes, response modes, use of administrative records to collect data, and other proposed methods of data collection.

Timing—Census Day for the purpose of this test is June 1, 2013. The Census Bureau will begin to notify households in May 2013, and the data collection activities will conclude during or before September 2013.

III. Data

OMB Control Number: 0607–XXXX.

Form Number: TBD.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 212,000.

Estimated Time Per Response: 10 minutes for census form and 10 to12 minutes for the attitudinal survey.

Estimated Total Annual Burden Hours: 36,167.

Estimated Total Annual Cost: Respondents who are contacted by cell phone and/or text message may incur charges depending on their plan with their service provider. The Census Bureau estimates that the total cost to respondents will be no more than $840,000. There are no other costs to respondents other than their time to participate in this data collection.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 31, 2012

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–21979 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Report of Building or Zoning Permits Issued for New Privately-Owned Housing Units (Building Permits Survey)

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before November 5, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica M. Filipek, U.S. Census Bureau, MCD, CENHQ Room 7K057, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–5161 (or via the Internet at *Erica.Mary.Filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request a three-year extension of a currently approved collection of the Form C–404, Building Permits Survey. The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series are key economic indicators. Two such series are (a) Housing Units Authorized by Building Permits and (b) Housing Starts. Both are based on data from samples of permit-issuing places. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy.

The Census Bureau uses Form C–404 to collect data to provide estimates of the number and valuation of new residential housing units authorized by building permits. The form is titled ''Report of Building or Zoning Permits Issued for New Privately-Owned Housing Units''. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family, and to select samples for the Census Bureau's demographic surveys. The Census Bureau also uses the detailed geographic data collected from state and local officials on new residential construction authorized by building permits in the development of annual population estimates that are used by government agencies to allocate funding and other resources to local areas. Policymakers, planners, businessmen/women, and others also use the detailed geographic data to monitor growth and plan for local services and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas. Building permits are public records; therefore, the information is not subject to disclosure restrictions.

II. Method of Collection

Respondents may submit their completed form by mail, Internet or fax. Some respondents choose to email electronic files or mail printouts of permit information in lieu of returning the form.

The survey universe is comprised of approximately 19,425 local governments that issue building permits. Monthly,

we collect this information via Internet, mail or fax for about 8,225 permit-issuing jurisdictions and via electronic files or printouts of permits for about 650 jurisdictions. Annually, we collect this information via Internet, mail or fax for the remaining 10,550 jurisdictions.

III. Data

OMB Number: 0607–0094.

Form Number: C–404. You can obtain information on the proposed content at this Web site: *www.census.gov/mcd/clearance.*

Type of Review: Regular submission.

Affected Public: State and Local Governments.

Estimated Number of Respondents: 19,425.

Estimated Time Per Response: 8 minutes for monthly respondents who report via Internet, mail or faxing the form, 3 minutes for monthly respondents who send electronic files or printouts, and 23 minutes for annual respondents who report via Internet, mail or faxing the form.

Estimated Total Annual Burden Hours: 17,594.

Estimated Total Annual Cost: $416,012.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 30, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–21880 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–09–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–33–2012]

Foreign-Trade Zone 220—Sioux Falls, SD; Authorization of Production Activity; Rosenbauer America, LLC/ Rosenbauer South Dakota, LLC, (Emergency Vehicles/Firefighting Equipment), Lyons, SD

On April 30, 2012, the Sioux Falls Development Foundation, grantee of FTZ 220, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Rosenbauer America, LLC/ Rosenbauer South Dakota, LLC, within FTZ 220—proposed Site 8, in Lyons, South Dakota.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 27417–27418, 05/10/2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: August 28, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–21997 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1854]

Reorganization of Foreign-Trade Zone 155 Under Alternative Site Framework; Calhoun and Victoria Counties, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of zones;

Whereas, the Calhoun-Victoria Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 155, submitted an application to the Board (FTZ Docket 29–2012, filed 04/09/2012) for authority to reorganize under the ASF with a service area of the Counties of Calhoun, Victoria and Matagorda, Texas, within the Port Lavaca-Point Comfort Customs and Border Protection port of entry, FTZ 155's existing Sites 1, 3, 4, 5 and 6 would be categorized as magnet sites, and FTZ 155's existing Sites 2 and 7 would be categorized as usage-driven sites;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 22558, 04/16/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 155 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1, 3, 4, 5 and 6 if not activated by August 31, 2017, and to a three-year sunset provision for usage-driven sites that would terminate authority for Sites 2 and 7 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by August 31, 2015.

Signed at Washington, DC, this 29th day of August 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:_____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–21996 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1852]

Reorganization of Foreign-Trade Zone 94 Under Alternative Site Framework; Laredo, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR

1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of zones;

Whereas, the City of Laredo, grantee of Foreign-Trade Zone 94, submitted an application to the Board (FTZ Docket 22–2012, filed 03/23/2012) for authority to reorganize under the ASF with a service area of Webb County, Texas, within and adjacent to the Laredo Customs and Border Protection port of entry, FTZ 94's existing Sites 1 through 7 would be categorized as magnet sites, and FTZ 94's existing Sites 8 through 11 would be categorized as usage-driven sites;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 19001, 03/29/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 94 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2 through 7 if not activated by August 31, 2017, and to a three-year sunset provision for usage-driven sites that would terminate authority for Sites 8 through 11 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by August 31, 2015.

Signed at Washington, DC, this 29 day of August 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–21995 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1853]

Reorganization of Foreign-Trade Zone 149 Under Alternative Site Framework Freeport, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of zones;

Whereas, Port Freeport, grantee of Foreign-Trade Zone 149, submitted an application to the Board (FTZ Docket 27–2012, filed 04/02/2012) for authority to reorganize under the ASF with a service area of the Counties of Brazoria and Fort Bend, Texas, within and adjacent to the Freeport Customs and Border Protection port of entry, FTZ 149's existing Sites 1, 3 and 10 would be categorized as magnet sites, and FTZ 149's Sites 2, 4, 5, 6, 7, 8, 9, 11 and 12 would be removed from the zone;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 21081–21082, 04/09/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 149 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 3 and 10 if not activated by August 31, 2017.

Signed at Washington, DC, this 29th day of August 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–21994 Filed 9–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of the 18th Antidumping Duty Administrative Review, and Partial Rescission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting the 18th administrative review of the antidumping order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea [1] (Korea). This review covers seven manufacturers and/or exporters (collectively, the respondents) of the subject merchandise: Dongbu Steel Co., Ltd., (Dongbu), Dongkuk Industries Co., Ltd. (Dongkuk), Haewon MSC Co. Ltd. (Haewon), Hyundai HYSCO (HYSCO), LG Chem., Ltd. (LG Chem), LG Hausys, Ltd. (Hausys), and Union Steel Manufacturing Co., Ltd. (Union).[2] The period of review (POR) is August 1, 2010, through July 31, 2011. We preliminarily determine that Dongbu and HYSCO have not made sales of subject merchandise at less than normal value (NV).

If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Additionally, we are rescinding this review with respect to POSCO because this company has been revoked from the antidumping duty order.[3]

DATES: *Effective Date:* September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson (Dongbu) or Christopher Hargett (HYSCO), AD/CVD Operations, Office 3, Import Administration, International Trade

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 76 FR 61076 (October 3, 2011) (*Initiation Notice*).

[2] The Department also initiated a review of Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, POSCO), in the *Initiation Notice.* However, POSCO was revoked from the order on March 12, 2012. *See Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009–2010 Administrative Review and Revocation, in Part,* 77 FR 14501 (March 12, 2012) (*CORE 17 Final Results*).

[3] *Id.*

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3797, and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published the antidumping duty order on CORE from Korea.[4] On August 2, 2010, we published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 45773 (August 1, 2011). On August 31, 2010, respondents and petitioners [5] requested a review of Dongbu, Dongkuk, Haewon, Hausys, HYSCO, LG Chem, POSCO, and Union. The Department initiated a review of each of the companies for which a review was requested.[6]

Selection of Respondents for Individual Examination

On October 6, 2011, the Department placed on the record and distributed to all interested parties under administrative protective order a memorandum stating that we intend to limit the number of companies individually examined during this review and attaching proprietary data to be used for selection of companies for individual examination in this administrative review.[7] Due to the large number of companies in this administrative review and the resulting administrative burden of examining each company for which a request was made, the Department determined that it would not be practicable to examine individually all eight producers/exporters of subject merchandise for which a review had been initiated.[8] After careful consideration of our resources, we determined to review a reasonable number of respondents which account for the largest volume of subject merchandise exported from Korea in accordance with section 777A(c)(2) of the Act.[9] On October 26, 2011, the Department selected Dongbu and HYSCO as mandatory respondents in this review.[10]

During the most recently completed segments of the proceeding in which HYSCO and Dongbu participated,[11] the Department disregarded sales below the cost of production (COP) for each of these companies. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP. We instructed HYSCO and Dongbu to respond to sections A through D of the initial questionnaire,[12] which we issued on October 26, 2011.

From December 2011 through August 2012, Dongbu and HYSCO submitted timely responses to the Department's questionnaires.[13]

Union

On October 28 and November 22, 2011, Union submitted requests to be considered a mandatory respondent by the Department.[14] On January 3, 2012, Union submitted its section A response to the Department's initial questionnaire. On January 20, 2012, Union submitted its sections B through D response to the Department's initial questionnaire. On April 10, 2012, Union met with the Department to reiterate its request that it be selected as a respondent in the instant case.[15] Pursuant to the reasons stated in the Respondent Selection Memo, the Department maintains its decision to select and individually review only two mandatory respondents in the instant review, Dongbu and HYSCO.

Although Union was not selected as a mandatory respondent, it submitted a voluntary response and has requested to be treated as a voluntary respondent.[16] As provided in section 782(a) of the Act, and consistent with our findings in *Frozen Shrimp,*[17] we separately addressed the issue of whether we can examine voluntary respondents, considering the available resources in light of the current workload, including the work involved in examining the two mandatory respondents, to determine whether examining voluntary respondents would be unduly burdensome or inhibit timely completion of the review.[18] For the reasons discussed in the Union Voluntary Respondent Memo, we determined that given the existing resources and the complexity of this case, examining Union as a voluntary respondent would be unduly burdensome and inhibit the timely completion of this administrative review.[19] Thus we are not examining Union as a voluntary respondent.

On October 28, 2011, POSCO submitted its request to be considered a voluntary respondent by the Department, but it withdrew its request to participate as a voluntary respondent for this administrative review on November 10, 2011. As mentioned, *supra,* POSCO was revoked from the CORE Order in the *CORE 17 Final Results,* thus, we are rescinding this review with respect to POSCO.

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[4] *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 58 FR 44159 (August 19, 1993) (*Orders on Certain Steel from Korea*).

[5] Petitioners are the United States Steel Corporation (U.S. Steel), Nucor Corporation (Nucor), and ArcelorMittal USA LLC (ArcelorMittal USA).

[6] *See Initiation Notice.*

[7] *See* Memorandum to the File, ''Customs and Border Patrol Data for Selection of Respondents for Individual Review'' (October 6, 2011).

[8] *Id.*

[9] *See* Memorandum to Melissa Skinner, Director, Office 3, AD/CVD Operations, through James Terpstra, Program Manager, Office 3, AD/CVD Operations, FROM: Christopher Hargett, Senior International Trade Compliance Analyst, Office 3, AD/CVD Operations, titled ''Selection of Respondents for Individual Review'' (October 26, 2011) (Respondent Selection Memo).

[10] *See* Memorandum from Christopher Hargett, Sr. International Trade Compliance Analyst, through James Terpstra, Program Manager, to Melissa Skinner, Director, Office 3, entitled ''18th Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Review,'' dated October 26, 2010 (Respondent Selection Memo).

[11] *See Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review,* 76 FR 17381 (March 29, 2011).

[12] Section A: Organization, Accounting Practices, Markets and Merchandise; Section B: Comparison Market Sales; Section C: Sales to the United States; Section D: Cost of Production and Constructed Value; Section E: Further Manufacturing.

[13] On August 13, 2012, Dongbu submitted a response to the Department's second section D supplemental questionnaire issued on August 3, 2012, but Dongbu inadvertently omitted narrative pages in this submission. Following the Department's instructions, Dongbu resubmitted a complete response on August 14, 2012.

[14] *See* Letter from Union to the Department requesting to be a third mandatory respondent, dated October 28, 2011; *see also* Letter from Union to the Department requesting to be a third mandatory respondent, dated November 22, 2011.

[15] *See* Memo to the File, ''Ex Parte Meeting with Counsel for Union Steel,'' dated April 23, 2012.

[16] *See* Letter from Union to the Department requesting to be a voluntary respondent, dated October 28, 2011; *see also* Letters from Union requesting to be a third mandatory respondent, dated October 28, 2011 and November 22, 2011 (both requesting in the alternative to be considered a voluntary respondent).

[17] *See Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination,* 77 FR 13082, 13085 (March 5, 2012) (*Frozen Shrimp*).

[18] *See* Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, from Melissa Skinner, Office Director AD/CVD Operations, Office 3, entitled ''The 18th Antidumping Duty Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products (CORE) from the Republic of Korea: Union Steel's Request to be Examined as a Voluntary Respondent,'' dated August 30, 2012 (Union's Voluntary Respondent Memorandum).

[19] *Id.*

Period of Review

The POR covered by this review is August 1, 2010, through July 31, 2011.

Scope of the Order

This order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.,* products which have been ''worked after rolling''). Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Rates for Respondents Not Selected for Individual Examination

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 not selected for individual examination. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or *de minimis* weighted-average dumping margins or any weighted-average dumping margins based on total facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies excluding rates that are zero, *de minimis,* or based entirely on facts available.[20] Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis,* or based on total facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possible method is ''averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

In this review, we have calculated weighted-average dumping margins of zero or *de minimis* for both companies selected as mandatory respondents. In previous cases, the Department has determined that a ''reasonable method'' to use when, as here, the rates of the respondents selected for individual examination are zero or *de minimis* is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available (which may be from a prior review or new shipper review).[21] If any such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company in the review in question, including when that rate is zero or *de minimis.*[22] However, all prior rates for this proceeding were calculated using the Department's zeroing methodology. The Department has stated that it will not use its zeroing methodology in administrative reviews with preliminary determinations issued after April 16, 2012.[23] Therefore, we will not apply any rates calculated in prior reviews to the non-selected companies in these reviews. Based on this, and in accordance with the statute and the Department's recent practice in *AFBs 2012,*[24] we determine that a reasonable method for determining the weighted-average dumping margins for the non-selected respondents in this review is to average the weighted-average dumping margins calculated for the mandatory respondents.

Targeted Dumping Allegations

On May 8 and 24, 2012, petitioners submitted targeted dumping allegations with regard to HYSCO and Dongbu, respectively.

The petitioners note that they conducted their own targeted dumping analyses of Dongbu's and HYSCO's U.S. sales using the Department's targeted dumping methodology as applied in *Steel Nails* and modified in *Wood Flooring.*[25] Based on the petitioners' own analysis, the petitioners argue that the Department should conduct a targeted dumping analysis and employ average-to-transaction comparisons

[20] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008) (*AFBs 2008*), and accompanying Issues and Decision Memorandum at Comment 16.

[21] *See AFBs 2008,* and accompanying Issues and Decision Memorandum at Comment 16.

[22] *Id.*

[23] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[24] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Preliminary Results of Antidumping Duty Administrative Reviews and Rescission of Antidumping Duty Administrative Reviews in Part,* 77 FR 33159 (June 5, 2012) (*AFBs 2012*).

[25] *See* The petitioners' Allegation of Targeted Dumping with respect to Dongbu, dated May 24, 2012, at 3, 5–7, and (citing *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33,977 (June 16, 2008) (*Steel Nails*), and accompany Issues and Decision Memorandum at Comment 8; *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) (*Wood Flooring*), and accompanying Issues and Decision Memorandum at Comment 4); The petitioners' Allegation of Targeted Dumping with respect to HYSCO, dated May 8, 2012, at 3, 5–6 (same).

without offsets, should the Department find that the record supports its allegation of targeted dumping.

On August 7, 2012, Dongbu submitted its response to petitioners' May 24, 2012, targeted dumping allegation submitted with regard to Dongbu. Dongbu argued that there is no statutory authority for applying the targeted dumping exception provided in section 777A(d)(1)(B) of the Act to this administrative review. Moreover, Dongbu claimed that a decision to apply the average-to-transaction methodology with zeroing in this review would completely undermine the recent change to the Department's zeroing practice in reviews that was announced in the *Final Modification for Reviews.* Accordingly, Dongbu requested that the Department reject petitioners' targeted dumping allegation and instead apply its new monthly average-to-average comparison methodology without zeroing the negative comparison results in these preliminary results.

HYSCO did not comment on the targeted dumping allegation submitted by the petitioners.

For purposes of these preliminary results, the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margin, the Department applied the calculation methodology adopted in the *Final Modification for Reviews.*[26] In particular, the Department compared monthly, weighted-average U.S. prices with monthly, weighted-average normal values, and granted offsets for negative comparison results in the calculation of the weighted-average dumping margins.[27] 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.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all CORE products produced by the respondents, meeting the description of the scope of the order, and sold in the home market during the POR to be foreign like products. As the basis for NV, we first identified home market sales in the ordinary course of trade of foreign like product which was identical to the subject merchandise sold in the United States. Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we identified home market sales of the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire.

Fair Value Comparisons

To determine whether sales of CORE by the respondents to the United States were made at prices less than NV, we compared U.S. prices, based either on the export price (EP) or the constructed export price (CEP), to the NV, as described in the ''Export Price/ Constructed Export Price'' and ''Normal Value'' sections of this notice. In particular, the Department compared monthly, weighted-average EPs or CEPs with monthly, weighted-average normal values, and granted offsets for negative comparison results in the calculation of the weighted-average dumping margin for each respondent.[28]

Export Price/Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices and the applicable delivery terms to the first unaffiliated customer in, or for exportation to, the United States.

For U.S. prices based on EP, we made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, and U.S. customs duty.

In accordance with section 772(b) of the Act, we calculated CEP where the record established that sales made by HYSCO and Dongbu were made in the United States after importation. HYSCO's and Dongbu's respective affiliates in the United States (1) took title to the subject merchandise and (2) invoiced and received payment from the unaffiliated U.S. customers for their sales of the subject merchandise to those U.S. customers.[29] Thus, where appropriate, the Department determined that U.S. prices for these sales should be based on the CEP under section 772(b) of the Act. Where appropriate, we made deductions from the starting price for foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, U.S. customs duty, credit expenses, warranty expenses, commissions, inventory carrying costs incurred in the United States, and other indirect selling expenses in the United States associated with economic activity in the United States.[30] Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

HYSCO's Entries of Subject Merchandise that were Further Manufactured and Sold as Non-Subject Merchandise in the United States

In its section A questionnaire response, HYSCO requested that the Department excuse it from reporting information for certain POR sales of subject merchandise imported by its wholly owned U.S. subsidiary, HYSCO America Company (HAC), that were further manufactured after importation and sold as non-subject merchandise in the United States, claiming that determining CEP for sales through HAC would be unreasonably burdensome.[31]

Section 772(e) of the Act provides that when the value added in the United States by an affiliated party is likely to exceed substantially the value of the subject merchandise, the Department shall use one of the following prices to

[26] *See Final Modification for Reviews.*

[27] *See id.* at 8102.

[28] *See Final Modification for Reviews.*

[29] *See* Letter from HYSCO to the Department entitled ''Eighteenth Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Korea: Section A Questionnaire Response,'' dated December 20, 2011, at pages A1–A3, (HYSCO QRA) at A–23; *see also* Letter from Dongbu to the Department entitled ''Corrosion-Resistant Carbon Steel Flat Products from Korea: Administrative Review (8/1/10–7/31/11),'' dated December 30, 2011, at pages A10 and A–23 (Dongbu QRA).

[30] *See* sections 772(c)(2)(A) and 772(d)(1) of the Act.

[31] *See* HYSCO QRA at pages A1–A3.

determine CEP if there is a sufficient quantity of sales to provide a reasonable basis of comparison and the use of such sales is appropriate: (1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

The record evidence shows that the value added by the affiliated party to the subject merchandise after importation in the United States was significantly greater than the 65 percent threshold we use in determining whether the value added in the United States by an affiliated party substantially exceeds the value of the subject merchandise.[32] We then considered whether there were sales of identical subject merchandise or other subject merchandise sold in sufficient quantities by the exporter or producer to an unaffiliated person that could provide a reasonable basis of comparison. In addition to the sales to HAC that were further manufactured, HYSCO also had CEP sales of similar, but not identical, subject merchandise to unaffiliated customers in the United States in back-to-back transactions through another HYSCO affiliate in the United States, Hyundai HYSCO USA (HHU).[33]

The appropriate methodology for determining the CEP for sales whose value has been substantially increased through U.S. further manufacturing generally must be made on a case-by-case basis.[34] In this instance, we find that there is a reasonable quantity of sales of subject merchandise to unaffiliated parties for comparison purposes.[35] Furthermore, there is no other reasonable methodology for determining CEP for HAC's further-manufacturered sales. Therefore, we relied on HYSCO's other sales of similar merchandise to unaffiliated parties in the United States as the basis for calculating CEP for HYSCO's sales through HAC, which is consistent with the previous administrative reviews of CORE from Korea.[36]

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in usual commercial quantities and in the ordinary course of trade. We increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act.

Where appropriate, we deducted inland freight from the plant to distribution warehouse, warehouse expense, inland freight from the plant/warehouse to customer, and packing, pursuant to section 773(a)(6)(B) of the Act. Additionally, we made adjustments to NV, where appropriate, for credit and warranty expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Where appropriate, we added interest revenue, and applied billing adjustments to the gross unit price.

For purposes of calculating NV, section 771(16) of the Act defines ''foreign like product'' as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. When no identical products are sold in the home market, the products which are most similar to the product sold in the United States are identified. When the NV is based on the prices of sales for the most similar products, an adjustment is made to the NV for differences in cost attributable to differences in the actual physical characteristics between the products sold in the United States and in the home market.[37]

Cost of Production

As stated above, in the most recently completed segments of this proceeding in which HYSCO and Dongbu participated, the Department found and disregarded sales that failed the cost test for each of these companies. Therefore, for this review, the Department has reasonable grounds to believe or suspect that sales of the foreign like products under consideration for the determination of NV may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, the Department conducted a COP investigation of sales in the home market by HYSCO and Dongbu.

A. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act. Except as noted below, the Department relied on the COP data submitted by HYSCO and Dongbu in their supplemental section D questionnaire responses.

HYSCO provided information showing that it purchased substrate (i.e., hot-rolled coil) from affiliated parties. The substrate is a major input into production of the merchandise-under-consideration, and, therefore, we have applied the major input rule to value such purchases. As a result, we adjusted HYSCO's substrate costs pursuant to section 773(f)(3) of the Act. In addition, for the preliminary results we used the cost of manufacturing adjusted to reflect the differences in temper rolling costs.[38]

Based on our review of the record evidence, neither Dongbu nor HYSCO appeared to experience significant changes in the cost of manufacturing during the POR.[39] Therefore, we followed our normal methodology of calculating POR weighted-average COP.

[32] *See* 19 CFR 351.402(c)(2); HYSCO QRA at A9.

[33] *See* HYSCO QRA at A9; Letter from HYSCO to the Department entitled ''Eighteenth Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Korea: Supplemental Sections A–C Questionnaire Response,'' dated August 7, 2012 (HYSCO 2SQR), at page 1 and exhibit 1.

[34] *See* the Department's Antidumping Questionnaires, Appendices I–V at page I9 and I10, available at *http://ia.ita.doc.gov/questionnaires/questionnaires-ad.html.*

[35] *See* Memorandum to the File, from Christopher Hargett, Sr. International Trade Compliance Analyst, through James Terpstra, Program Manager, AD/CVD Operation Office 3, entitled ''Preliminary Results in the 18th Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Hyundai HYSCO,'' dated concurrently with this notice (HYSCO Calc Memo).

[36] *See, e.g., CORE 17 Final Results; see also Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review,* 75 FR 55769 (September 14, 2010) (unchanged in the final results); *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 74 FR 46110, 46112 (September 8, 2009) (unchanged in the final results); *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 73 FR 52267, 52270 (September 9, 2008) (unchanged in the final results).

[37] *See* 19 CFR 351.411 and section 773(a)(6)(C)(ii) of the Act.

[38] *See* Memorandum from Ernest Z. Gziryan, Senior Accountant, through Theresa C. Deeley, Lead Accountant, to Neal M. Halper, Director, Office of Accounting, entitled ''Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Korea: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Hyundai HYSCO,'' dated concurrently with this notice (HYSCO Cost Calculation Memo).

[39] *See* Letter from HYSCO to the Department entitled ''Eighteenth Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Korea: Response of Hyundai HYSCO to Section D of the Department's October 26, 2012, Questionnaire,'' dated January 13, 2012, at exhibit D–3.

B. Test of Comparison Market Sales Prices

As required under section 773(b)(2) of the Act, we compared the POR weighted-average COP to the per-unit price of the home market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net home market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we disregarded no below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

As a result of our analysis for these preliminary results, for HYSCO and Dongbu, we have disregarded certain home markets sales priced below COP in accordance with section 773(b)(1) of the Act.[40]

Calculation of NV Based on Home Market Prices

For those home market products for which there were sales at prices above the COP for HYSCO and Dongbu, we based NV on home market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales, made in the ordinary course of trade, of either an identical or a similar foreign like product, based on the matching characteristics identified in Appendix V of the original questionnaire. We calculated NV based on free on board (FOB) mill or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (*see* discussion below regarding these arm's-length sales). We made deductions, where appropriate, from the starting price for billing adjustments, discounts, rebates, and inland freight. Additionally, we added interest revenue, where appropriate. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses and other direct selling expenses, such as the expense related to bank charges and factoring. *Id.* We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Arm's-Length Sales

Dongbu and HYSCO reported that they made sales in the home market to affiliated parties. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.,* sales at arm's-length.[41]

To test whether these sales were made at arm's length, we compared the reported home market prices of sales to affiliated and unaffiliated customers with applied billing adjustments, including interest revenue, net of all movement charges, direct selling expenses, discounts, rebates, and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties at the same level-of-trade for merchandise identical or most similar to the merchandise sold to the affiliated party, we considered the sales to be at arm's-length prices.[42] Conversely, where we found that the sales to an affiliated party did not pass the arm's-length test, then all sales to that affiliated party have been excluded from the NV calculation.[43]

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the home market at the same level of trade (LOT) as the EP or CEP sales, to the extent possible. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at the most similar LOT.

Pursuant to 19 CFR 351.412, to determine whether EP or CEP sales and NV sales were at different LOTs, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the home market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT, and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[44]

We did not make an LOT adjustment under 19 CFR 351.412(e) because there was only one home market LOT for each respondent and we were unable to identify a pattern of consistent price differences attributable to differences in LOTs.[45] NV sales for each company are at a more advanced LOT than the LOT for their respective U.S. CEP sales.[46] Thus, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset for Dongbu and HYSCO.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* Dongbu and HYSCO's preliminary results calculation memorandum.

[40] *See* HYSCO and Dongbu Cost Calculation Memos.

[41] *See* 19 CFR 351.403(c).

[42] *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 71 FR 45017, 45020 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 72 FR 7011 (February 14, 2007)); 19 CFR 351.403(c).

[43] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (November 15, 2002); *also see* Dongbu and HYSCO's preliminary results calculation memorandums, dated concurrently with this notice.

[44] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

[45] *See* 19 CFR 351.412(d).

[46] *See* HYSCO Calc Memo at page 3, and Dongbu's Calc Memo at page 3.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

Manufacturer/Exporter	Weighted-average dumping margins (percent)
Dongbu	0
HYSCO	0
Review-Specific Average Rate Applicable to: Dongkuk, Haewon, Hausys, LG Chem, and Union	0

Comment

The Department intends to disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[47] Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs.[48] Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results.[49] Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). 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, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended.[50]

[47] *See* 19 CFR 351.309(c)(ii).

[48] *See* 19 CFR 351.309(d).

[49] *See* 19 CFR 351.310(c).

[50] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for particular respondents is above *de minimis* in the final results of these reviews, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value for those sales in accordance with 19 CFR 351.212(b)(1).[51]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[52] This clarification will apply to entries of subject merchandise during the period of review produced by companies selected for individual examination in these preliminary 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 country-specific all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[53]

For the companies which were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the all-others rate established in the LTFV.[54] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[51] 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.

[52] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[53] *See id.*

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–21993 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–807]

Ferrovanadium and Nitrided Vanadium from the Russian Federation: Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determination by the International Trade Commission (ITC), that revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from the Russian Federation (Russia) would not be likely to lead to continuation or recurrence of material injury to an industry in the United

[54] *See Orders on Certain Steel from Korea.*

States within a reasonably foreseeable time,[1] the Department of Commerce (the Department) is publishing this notice of revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

DATES: *Effective Date:* October 13, 2011.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1995, the Department published the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.[2] On September 1, 2011, the Department initiated and the ITC instituted the third sunset review of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3]

The Department expedited the third sunset review of the antidumping duty order on nitrided vanadium from Russia. As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[4]

On August 22, 2012, the ITC notified the Department that, pursuant to section 751(c) of the Act, revocation of this order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of the order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.,* more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen.

Excluded from the scope of the order are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to the order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Revocation

As a result of the determination by the ITC that revocation of the order is not likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the antidumping duty order on ferrovanadium and nitrided vanadium from Russia. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is October 13, 2011 (*i.e.,* the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of the antidumping duty order).[6] The Department intends to notify U.S. Customs and Border Protection (CBP), 15 days after publication of this notice, to discontinue suspension of liquidation and collection of cash deposits on entries of ferrovanadium and nitrided vanadium from Russia entered or withdrawn from warehouse on or after October 13, 2011, the effective date of revocation of the antidumping duty order. The Department will further instruct CBP to refund with interest any cash deposits on entries made on or after October 13, 2011. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping deposit requirements. The Department will complete any pending administrative reviews of this order.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

This revocation and notice are issued in accordance with section 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.222(i)(2).

Dated: August 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–22019 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Ferrovanadium and Nitrided Vanadium From Russia,* 77 FR 51825 (August 27, 2012) (*ITC Final*).

[2] *See Notice of Antidumping Order: Ferrovanadium and Nitrided Vanadium from the Russian Federation,* 60 FR 35550 (July 10, 1995).

[3] *See Initiation,* and *Ferrovanadium and Nitrided Vanadium From Russia; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium From Russia,* 76 FR 54490 (September 1, 2011).

[4] *See Final Results of Expedited Sunset Review: Ferrovanadium and Nitrided Vanadium From Russia,* 76 FR 78888 (December 20, 2011).

[5] *See ITC Final* and *Ferrovanadium and Nitrided Vanadium From Russia:* Investigation No. 731–TA–702 (Third Review), USITC Publication 4345 (August 2012).

[6] *See Ferrovanadium and Nitrided Vanadium From Russia: Notice of Continuation of Antidumping Duty Order,* 71 FR 60475 (October 13, 2006).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 1, 2012, the Department of Commerce (''the Department'') initiated the first five-year (''sunset'') review of the antidumping duty order on certain polyester staple fiber from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested party, as well as a lack of response from respondent interested parties, the Department conducted an expedited sunset review of the antidumping duty order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order on certain polyester staple fiber from the PRC would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4047.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2012, the Department initiated the first sunset review of the antidumping duty order on certain polyester staple fiber from the PRC, pursuant to section 751(c) of the Act and 19 CFR 351.218(c)(2).[1] The Department received a notice of intent to participate from DAK Americas, LLC (''domestic interested party'') within the deadline specified in 19 CFR 351.218(d)(1)(i).[2] The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

We received a complete substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We received no responses from respondent interested parties. As a result, the Department conducted an expedited sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The merchandise subject to the order is certain polyester staple fiber defined under the scope of the order as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 millimeters (''mm'')) to five inches (127 mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. Polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 5503.20.0045 (3.3 to 13.2 decitex) and 5503.20.00.65 (13.2 decitex or greater). Although the subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

The following products are excluded from the scope: Polyester staple fiber of less than 3.3 decitex (less than 3 denier) currently classifiable in the HTSUS at subheading 5503.20.00.25 and known to the industry as polyester staple fiber for spinning and generally used in woven and knit applications to produce textile and apparel products, PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting, and low-melt polyester staple fiber defined as a bi-component fiber with an outer, non-polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Certain Polyester Staple Fiber from the People's Republic of China'' (''Decision Memorandum'') from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with and hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order was to be revoked. Parties may find a complete discussion of all issues raised in the review and the corresponding recommendations in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the order would be likely to lead to continuation or recurrence of dumping and that the magnitudes of the margins of dumping likely to prevail are as follows:

Exporter	Margin of dumping (percent)
Far Eastern Industries (Shanghai) Ltd	3.47
Cixi Sansheng Chemical Fiber Co., Ltd	4.44
Cixi Waysun Chemical Fiber Co., Ltd	4.44
Hangzhou Best Chemical Fibre Co., Ltd	4.44
Hangzhou Hanbang Chemical Fibre Co., Ltd	4.44
Hangzhou Huachuang Co., Ltd	4.44
Hangzhou Sanxin Paper Co., Ltd	4.44
Hangzhou Taifu Textile Fiber Co., Ltd	4.44
Jiaxang Fuda Chemical Fibre Factory	4.44
Nantong Luolai Chemical Fiber Co. Ltd	4.44
Nanyang Textile Co., Ltd	4.44
Suzhou PolyFiber Co., Ltd	4.44
Xiamen Xianglu Fiber Chemical Co	4.44
Zhaoqing Tifo New Fiber Co., Ltd	4.44
Zhejiang Anshun Pettechs Fibre Co., Ltd	4.44
Zhejiang Waysun Chemical Fiber Co., Ltd	4.44
PRC-Wide Rate	44.30

Notice Regarding Administrative Protective Order (''APO'')

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This sunset review and notice are in accordance with sections 751(c), 752(c), and 771(i)(1) of the Act.

Dated: August 29, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–22002 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (''Sunset'') Review; Correction,* 77 FR 28355 (May 14, 2012).

[2] *See* Letter from domestic interested party, regarding: ''Polyester Staple Fiber From China: Five Year (''Sunset'') Review of Antidumping Duty Order'', dated May 16, 2012.

[3] *See* Letter from domestic interested party, regarding: ''Polyester Staple Fiber From China: Five Year (''Sunset'') Review of Antidumping Duty Order'', dated May 31, 2012.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 5, 2012, the Department of Commerce (''the Department'') published its preliminary results of a changed circumstances review (''CCR'') of the antidumping duty order on aluminum extrusions from the People's Republic of China (''PRC''). The Department preliminarily determined that Guangdong Zhongya Aluminum Company Limited (''Guangdong Zhongya'') is the successor-in-interest to Zhaoqing New Zhongya Aluminum Co., Ltd. (''New Zhongya'').[1] We invited parties to comment. Since no parties submitted comments, the Department is making no changes to the *Preliminary Results.*

DATES: *Effective Date:* September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–6231.

SUPPLEMENTARY INFORMATION:

Background

New Zhongya, a producer of aluminum extrusions, participated in the antidumping duty investigation of aluminum extrusions from the PRC. The Department issued its final determination for this investigation on April 4, 2011.[2] As a result of that final determination, New Zhongya's weighted-average dumping margin is 33.28 percent.[3] The antidumping duty order was issued on May 26, 2011.[4]

On November 7, 2011, New Zhongya requested a changed circumstances review claiming that it had undergone a name change to Guangdong Zhongya Aluminum Company Limited.[5] New Zhongya requested that the antidumping duty rate, which was assigned to New Zhongya and was in effect before the date of the name change (*i.e.,* August 16, 2011), continue under the new name. New Zhongya's request, stating that it underwent no changes other than the change in the name, was accompanied by supporting documents from Chinese government authorities,[6] recognizing and approving the name change. Specifically, New Zhongya stated that no changes were made in personnel, management, ownership, facilities, customers, suppliers, *etc.*

In response to this request, on December 27, 2011, the Department initiated a CCR, and on January 27, 2012, the Department issued a questionnaire to New Zhongya. New Zhongya filed its questionnaire response on February 24, 2012. Its submission included organizational charts, employment contracts, board meeting minutes, monthly income statements and balance sheets, a product list, full lists of suppliers and home- and U.S.-market customers, and sample supplier and customer invoices, as well as narrative responses confirming a name change from New Zhongya to Guangdong Zhongya.

The petitioner in this proceeding, Aluminum Extrusions Fair Trade Committee, did not comment on New Zhongya's request or the *Preliminary Results* issued by the Department.

Scope of the Order

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (''drawn aluminum'') are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope.

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[1] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Changed Circumstances Review,* 77 FR 39683 (July 5, 2012) (''*Preliminary Results*'').

[2] *See Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 18524 (April 4, 2011); *see also Aluminum Extrusions From the People's Republic of China: Notice of Correction to the Final Determination of Sales at Less Than Fair Value,* 76 FR 20627 (April 13, 2011).

[3] *Id.*

[4] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011).

[5] *See* Letter from New Zhongya to the Department, ''Extruded Aluminum from China'' (request for Changed Circumstances Review), dated November 7, 2011.

[6] These Chinese government authorities include the Bureau of Foreign Trade & Economic Cooperation of High and New Technology Industrial Development Zone of Zhaoqing and the Administration Bureau for Industry and Commerce of Zhaoqing City.

The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the ''finished goods kit'' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: Aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; Aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a ''finished goods kit.'' A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ''as is'' into a finished product. An imported product will not be considered a ''finished goods kit'' and, therefore, excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 millimeters (''mm'') or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of this order are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (''HTS''): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, 7608.20.0090, 9506.11.4080, 9506.51.4000, 9506.51.6000, 9506.59.4040, 9506.70.2090, 9506.99.0510, 9506.99.0520, 9506.99.0530, 9506.99.1500, 9506.99.2000, 9506.99.2580, 9506.99.2800, 9506.99.6080, 9507.30.2000, 9507.30.4000, 9507.30.6000, 9507.90.6000, 8419.90.1000, 8302.10.3000, 8302.10.6030, 8302.10.6060, 8302.10.6090, 8302.30.3010, 8302.30.3060, 8302.41.3000, 8302.41.6015, 8302.41.6045, 8302.41.6050, 8302.41.6080, 8302.42.3010, 8302.42.3015, 8302.42.3065, 8302.49.6035, 8302.49.6045, 8302.49.6055, 8302.49.6085, 8302.60.9000, 8306.30.0000, 9403.90.8061, 9403.90.1040, 9403.90.1050, 9403.90.1085, 9403.90.2540, 9403.90.2580, 9403.90.4005, 9403.90.4010, 9403.90.4060, 9403.90.5005, 9403.90.5010, 9403.90.5080, 9403.90.6005, 9403.90.6010, 9403.90.6080, 9403.90.7005, 9403.90.7010, 9403.90.7080, 9403.90.8010, 9403.90.8015, 9403.90.8020, 9403.90.8041, 9403.90.8051, 9403.10.00, 9403.20.00, 8479.89.98, 8479.90.94, 8513.90.20, 8302.50.0000, 9506.91.0010, 9506.91.0020, 9506.91.0030, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.19.10, 7615.20.00, 7616.99.10 and 7616.99.50. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Final Results of Changed Circumstances Review

Because no parties have submitted comments opposing the Department's *Preliminary Results,* and because there is no other information or evidence on the record that calls into question the *Preliminary Results,* the Department determines that Guangdong Zhongya is the successor-in-interest to New Zhongya for the purpose of determining antidumping duty liability.

Instructions to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection to suspend liquidation and collect a cash deposit rate of 33.28 percent on all shipments of the subject merchandise exported by Guangdong Zhongya and entered, or withdrawn from warehouse, for consumption, on or after the publication date of these results of changed circumstances review.[7]

Notification

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

[7] *See Stainless Steel Plate in Coils From Belgium: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 77 FR 21963 (April 12, 2012), and accompanying Issues and Decision Memorandum; *see also Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand,* 75 FR 74684 (December 1, 2010), and accompanying Issues and Decision Memorandum.

and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: August 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–22001 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Input From Hawaii's Boat-based Anglers

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 5, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Hawkins, (808) 944–2291 or *Christopher.Hawkins@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires anglers who (1) engage in angling or spearfishing for fish in the Exclusive Economic Zone (EEZ); anadromous species in any tidal waters; or continental Shelf fishery resources beyond the EEZ, (2) operate a for-hire fishing vessel in the EEZ, (3) operate a for-hire fishing vessel that engages in angling or spearfishing for: anadromous species in any tidal waters; or continental shelf fishery resources beyond the EEZ, (4) possess equipment used for angling or spearfishing and also possesses: Fish in the EEZ; anadromous species in any tidal waters; or continental shelf fishery resources beyond the EEZ to register annually with the National Angler Register. Those in states which have received exempted status per regulations at 600 CFR 1415–17 need not register with NMFS. Under 600 CFR 1417, MSA allows NMFS to exempt a State that has developed a qualifying regional survey that meets the Marine Recreational Information Program's National Data Standards.

The State of Hawaii is developing a comprehensive data collection program that will meet the requirements set forth at 600CFR 1417 and exempt the State's anglers from the national registry requirement. The information gathered from the proposed voluntary survey of a sample of the State's registered boaters will be used to develop an ongoing (monitoring) survey of fishing catch and effort derived from Hawaii's private boaters—a required component of any qualifying regional survey. The survey instrument will also collect information to inform engagement of and projects aimed at local boat-based anglers under NOAA's National Recreational Saltwater Fishing Initiative.

II. Method of Collection

The survey instrument will be mailed to respondents using the address they provided to the State's Division of Boating and Ocean Recreation. The survey packet will include a personalized cover letter and a postage-paid, pre-addressed return envelope.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 334.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 31, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–21924 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC095

Marine Mammals; File No. 17278

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to James Shine, Ph.D., Harvard University School of Public Health, 401 Park Drive, 404H West, Boston, MA 02215, to import and receive marine mammal parts for 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

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 30, 2012 notice was published in the

Federal Register (77 FR 31835) that a request for a permit to import and receive specimens for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes the import and receipt of parts from subsistence-collected long-finned pilot whales (*Globicephala melas*) archived at the Faroese Museum of Natural History, Foroe Islands. Parts will be analyzed to assess the levels and geographic source of mercury. No animals would be killed for the purpose of providing samples under this permit. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: August 29, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–21980 Filed 9–5–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday October 5, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–22122 Filed 9–4–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday October 12, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–22123 Filed 9–4–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday October 19, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–22124 Filed 9–4–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday October 26, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–22125 Filed 9–4–12; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–HA–0100]

Proposed collection; comment request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 5, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Naval Health Research Center, DoD Center for Deployment Health Research, Department 164, ATTN: Nancy Crum-Cianflone, MD, MPH, 140 Sylvester Rd., San Diego, CA, 92106–3521, or call (619) 553–7335.

Title; Associated Form; and OMB Number: Prospective Department of Defense Studies of US Military Forces: The Millennium Cohort Study—OMB #0720–0029

Needs and Uses: The Millennium Cohort Study responds to recent recommendations by Congress and by the Institute of Medicine to perform investigations that systematically collect population-based demographic and health data so as to track and evaluate the health of military personnel throughout the course of their careers and after leaving military service. The Millennium Cohort Study will also evaluate family impact by adding a spouse assessment component to the Cohort, called the Millennium Cohort Family Study.

Affected Public: Civilians, formerly Active Duty and activated Reservists in the US Military, who enrolled and participated in Panels 1, 2, 3, and 4 of the Millennium Cohort Study, and civilians who elect to participate in the Millennium Cohort Family Study.

Millennium Cohort Study

Annual Burden Hours: 35,060.
Number of Respondents: 46,747.
Responses per Respondent: 1.
Average Burden Per Response: 45 minutes.
Frequency: every 3 years.

Millennium Cohort Family Study

Annual Burden Hours: 2,682.
Number of Respondents: 3,576.
Responses Per Respondent: 1.
Average Burden Per Response: 45 minutes.
Frequency: every 3 years.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Persons eligible to respond to this survey are those civilians now separated from military service who initially enrolled, gave consent and participated in the Millennium Cohort Study while on active duty in the Army, Navy, Air Force, Marine Corps or US Coast Guard during the first, second, third, or fourth panel enrollment periods in 2001–2003, 2004–2006, 2007–2008, or 2011–2012 respectively, as well as civilians that choose to participate in the Millennium Cohort Family Study.

Dated: August 31, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–21971 Filed 9–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement/Environmental Impact Report for the Proposed Ballona Wetlands Restoration Project at Ballona Creek Within the City and County of Los Angeles, California

AGENCY: U.S. Army Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of Intent—Extension of Comment Period for Scoping.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the California Department of Fish and Game (CDFG) intend to jointly prepare a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the proposed Ballona Wetlands Restoration Project. The proposed project is intended to return the daily ebb and flow of tidal waters, maintain freshwater circulation, and augment the physical and biological functions and services in the project area. Restoring the wetland functions and services would allow native wetland vegetation to be reestablished, providing important habitat for a variety of wildlife species. As a restored site, the Ballona Wetlands would play an important role to provide seasonal habitat for migratory birds. A restored, optimally functioning wetland would also benefit the adjacent marine environment and enhance the quality of tidal waters. The purpose of this notice is to inform the public the comment period for scoping has been extended to October 23, 2012.

DATES: Comment period for scoping has been extended from September 10 to October 23, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel P. Swenson at (213) 452–3414 (*daniel.p.swenson@usace.army.mil*), U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, Los Angeles, CA 90053–2325.

Mark D. Cohen,

Deputy Chief, Regulatory Division, Corps of Engineers.

[FR Doc. 2012–21945 Filed 9–5–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice Inviting Publishers To Submit Tests for a Determination of Suitability for Use in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

DATES: Deadline for transmittal of applications: October 1, 2012.

SUMMARY: The Secretary of Education (1) invites publishers to submit tests for review and approval for use in the National Reporting System for Adult Education (NRS); and (2) announces the date by which publishers must submit these tests.

FOR FURTHER INFORMATION CONTACT: John LeMaster, U.S. Department of Education, 400 Maryland Avenue SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–6218 or by email: *John.LeMaster@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: The Department's regulations for Measuring Educational Gain in the National Reporting System for Adult Education, 34 CFR part 462 (NRS regulations), include the procedures for determining the suitability of tests for use in the NRS.

Criteria the Secretary uses: In order for the Secretary to consider a test suitable for use in the NRS, the test must meet the criteria and requirements established in § 462.13.

Submission Requirements:

(a) In preparing your application, you must comply with the requirements in § 462.11.

(b) In accordance with § 462.10, the deadline for transmittal of applications is October 1.

(c) Whether you submit your application by mail (through the U.S. Postal Service or a commercial carrier) or deliver your application by hand or by courier service, you must mail or deliver three copies of your application, on or before the deadline date, to the following address: NRS Assessment Review, c/o American Institutes for Research, 1000 Thomas Jefferson Street NW., Washington, DC 20007.

(d) If you submit your application by mail or commercial carrier, 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 Department of Education.

(e) 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.

(f) If your application is postmarked after the application deadline date, we will not consider your

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.

(g) If you submit your application by hand delivery, you (or a courier service) must deliver three copies of the application by hand, on or before 4:30:00 p.m., Washington, DC time, on the application deadline date.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in 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 the 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 at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 9212

Dated: August 30, 2012.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2012–21866 Filed 9–5–12; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Request for Substantive Comments on the EAC's Proposed Requirements for Version 1.1 of the Voluntary Voting System Guidelines (VVSG)

AGENCY: United States Election Assistance Commission.

ACTION: Request for public comment on proposed requirements for Version 1.1 of the Voluntary Voting System Guidelines (VVSG).

SUMMARY: The Help America Vote Act of 2002 (HAVA) (Pub. L. 107–252; 42 U.S.C. 15301 *et seq.* (October 29, 2002)) established the U.S. Election Assistance Commission (EAC). Section 202 of HAVA directs the EAC to adopt voluntary voting system guidelines (VVSG) and to provide for the testing, certification, decertification, and recertification of voting system hardware and software. The VVSG provides specifications and standards against which voting systems can be tested to determine if they provide basic functionality, accessibility, and security capabilities. As required by Section 222 (d) of HAVA, the EAC is publishing a set of proposed requirements (Voluntary Voting System Guidelines, 1.1) for the testing of voting systems for a 90 day public comment period.

SUPPLEMENTARY INFORMATION:

Background

The EAC made the decision to update and revise the 2005 VVSG (also known as VVSG 1.0) as a result of feedback received through its Voting System Testing and Certification Program. As the EAC has worked to test and certify voting systems it observed and received feedback from various sources that the standards being tested to were at times ambiguous and difficult to apply in testing. This ambiguity led to challenges in making testing consistent both within a test laboratory and across test campaigns at different laboratories. The EAC also received feedback from the National Institute of Standards and Technology (NIST) that the creation of formalized test suites for the 2005 VVSG would be aided by a clarification of certain portions of document. This information, combined with the EAC's issuance of thirty five interpretations of the VVSG to clarify various standards, led the EAC to propose improvements to the 2005 VVSG. In addition, the EAC determined to implement a number of recommendations submitted by the EAC's Technical Guidelines Development Committee (TGDC).

The TGDC held numerous public meetings and subcommittee conference calls to create a set of draft guidelines for recommendation to the EAC (all TGDC meeting materials can be found at *http://www.nist.gov/itl/vote/*). On August 17, 2007, the TGDC voted to complete final edits of their recommendations and submitted them to the Executive Director of the EAC. The EAC received the draft guidelines from the TGDC on August 31, 2007.

After receipt of the TGDC's recommendations for the next iteration (VVSG 2.0) of the VVSG the EAC opened a one hundred and eighty day public comment period. During this comment period, which ran from September 2007 to May 2008, the EAC received comments praising many of the proposed standards as being more testable and less ambiguous than previous versions of the standard. This public comment period produced over 3000 comments on the recommendations. In addition, during the comment period the EAC conducted a series of seven roundtable discussions regarding the TGDC's recommendations. After the close of the public comment period for the TGDC's VVSG 2.0 recommendations and considering a variety of relevant factors, the EAC made the decision to first update and revise the 2005 VVSG with portions of the TGDC's recommendations. This serves as the basis for the creation of VVSG 1.1.

As noted during the previous public comment period for version VVSG 1.1, by revising the guidelines now, the EAC expects to improve the test process over the short term for existing voting systems while allowing additional time to develop more complex revisions for the requirements in VVSG 2.0 written for the next generation of voting systems. Topics currently undergoing

continued research at NIST include open ended vulnerability testing/ penetration testing, volume testing, further development of the concept of software independence and the development (with IEEE Working Group P1622 of a common data format for voting systems.

Changes to VVSG 1.1 Since the Initial Public Comment Period

The initial proposed revision to VVSG 1.1, was offered during a 120-day public comment period in the summer of 2009. Since that time, the EAC's Testing & Certification Program has discovered additional best practices, experienced anomalies and deficiencies with voting systems entering the Testing and Certification Program, and clarified many ambiguities with the standard. Changes were made after the 120-day public comment period to address these issues. Since the initial public comment, changes were made to the following areas:

Heading	Comment
Telecommunications	Treated all results as official.
NSRL	Removed all references.
Software Validation	Provided a secondary method of software validation not available in the 2005 VVSG.
Access Control	Enhanced access control requirements based on the two-tier access control model present in today's election equipment.
Quality Assurance and Configuration Management	Combined sections 8 and 9 into a single section.
Coding Convention Required Languages	Required all systems to officially support at least one ideographic language.
Audit and Election Logging	Enhanced and strengthen logging requirements by providing greater clarity and specific, especially for election logs.

Additionally, the EAC included all relevant Requests for Interpretations (located at the EAC's Web site) within the latest draft of VVSG 1.1. Please be aware that those sections added since the close of the initial public comment period for VVSG 1,1 are the only sections that the EAC is accepting comments on for this 90-day public comment period.

Project Summary

Although both Volume 1 and Volume 2 of the VVSG 1.1 draft have undergone revisions, and should be commented on, we believe most commenter's should focus on the significant changes to Volume 1 of the draft document. Major sections of VVSG 1.1 Volume 1 revised for this comment period include but are not limited to:

Volume 1

2.12 Accuracy
2.1.4 Integrity
2.1.5.1 Operational Requirements
2.3.1 Opening the Polls
2.3.3.3 DRE and EBM System requirements
2.4.1 Closing the Polls
2.4.4.2 Tabulator electronic reports
3.2.2.1 Editable electronic ballot interfaces
3.2.5 Visual display characteristics
3.3.2 Enhanced visual interfaces
3.3.4 Enhanced input and control characteristics
4.1.1 Accuracy requirements
4.1.2 Environmental requirements
4.1.2.4 Electrical supply
4.1.5.2 Ballot reading accuracy
4.3.3 Reliability
5.2.1 Scope (Software requirements)
5.2.2 Selection of programming languages
5.2.4 Software modularity and programming
5.2.5 Structured programming
5.2.8 Error checking
5.5 Vote secrecy on DRE and EBM systems
6.2.2 Durability (Telecommunications)
6.2.3 Reliability
7.1 Scope (Security requirements)
7.2 Access control
7.3 Physical security measures
7.4.4 Software distribution
7.4.5 Software reference information
7.4.6 Software setup validation
7.5.1 Maintaining data integrity
7.5.5 Election returns
7.7.3 Protecting transmitted data
7.8.2 Approve or void the paper record
7.8.3 Electronic and paper record structure
8 Quality Assurance and Configuration Management (all)

All changes made since the last public comment period are highlighted in yellow in the version published on the EAC's Web site and in the **Federal Register**.

The U.S. Election Assistance Commission (EAC) lacks a quorum of commissioners since the resignation of Commissioner Gracia Hillman on December 10, 2010. The EAC lost its two remaining commissioners in December 2011, with the resignations of Commissioners Gineen Bresso and Donetta Davidson. Because HAVA requires an affirmative vote of the Commission (Section 222(d)), all comments received will be reviewed and published as noted below. The final VVSG 1.1 draft document will be prepared for a Commission vote at such time as the EAC once again has a quorum of Commissioners.

DATES: Comments must be received on or before 4 p.m. EST on December 5, 2012.

Submission of Comments: The public may submit comments through one of the two different methods provided by the EAC: (1) Email submissions to *votingsystemguidelines@eac.gov;* (2) by mail to Voluntary Voting System Guidelines Comments, U.S. Election Assistance Commission, 1201 New York Ave. NW., Suite 300, Washington, DC 20005.

In order to allow efficient and effective review of comments the EAC requests that:

(1) Comments refer to the specific section that is the subject of the comment.

(2) General comments regarding the entire document or comments that refer to more than one section be made as specifically as possible so that EAC can clearly understand to which portion(s) of the documents the comment refers.

(3) To the extent that a comment suggests a change in the wording of a requirement or section of the guidelines, please provide proposed language for the suggested change.

All comments submitted will be published at the end of the comment period on the EAC's Web site at *www.eac.gov.* This publication and request for comment is not required under the rulemaking, adjudicative, or licensing provisions of the Administrative Procedures Act (APA). It is a voluntary effort by the EAC to gather input from the public on the EAC's administrative procedures for certifying voting systems to be used in pilot projects. Furthermore, this request by the EAC for public comment is not intended to make any of the APA's rulemaking provisions applicable to development of this or future EAC procedural programs.

An electronic copy of the proposed guidance may be found on the EAC's Web site at *http://www.eac.gov/open/comment.aspx.*

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Phone (202) 566–3100, email *votingsystemguidelines@eac.gov.*

Alice P. Miller,

Chief Operating Officer and Acting Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2012–21895 Filed 9–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2601–001; *ER10–2605–003.*

Applicants: Power Resources, Ltd., Yuma Cogeneration Associates.

Description: Notification of Changes in Status of Power Resources, Ltd., et al.

Filed Date: 8/28/12.

Accession Number: 20120828–5072.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER11–4267–002; ER11–4270–002; ER11–4269–003; ER11–4268–002; ER11–113–003; ER10–2682–002.

Applicants: Algonquin Northern Maine Gen Co., Algonquin Tinker Gen Co., Algonquin Power Windsor Locks LLC, Algonquin Energy Services Inc., Sandy Ridge Wind, LLC, Granite State Electric Company.

Description: Notice of Change in Status of Algonquin Energy Services Inc., et al.

Filed Date: 8/28/12.

Accession Number: 20120828–5071.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER12–2430–001.

Applicants: AP&G Holdings LLC.

Description: Amendment to pending baseline filing 1 to be effective 8/10/2012.

Filed Date: 8/28/12.

Accession Number: 20120828–5001.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER12–2529–000.

Applicants: KODE Novus II, LLC.

Description: KODE Novus II LLC MBR Application to be effective 10/27/2012.

Filed Date: 8/28/12.

Accession Number: 20120828–5040.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER12–2530–000.

Applicants: Southwest Power Pool, Inc.

Description: 2028R3 Sunflower Electric Power Corporation NITSA NOA to be effective 8/1/2012.

Filed Date: 8/28/12.

Accession Number: 20120828–5053.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER12–2531–000.

Applicants: ISO New England Inc., Central Maine Power Company.

Description: Kibby Wind Power Large Generator Interconnection Agreement to be effective 8/31/2012.

Filed Date: 8/28/12.

Accession Number: 20120828–5066.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER12–2532–000.

Applicants: ISO New England Inc., Central Maine Power Company.

Description: Sisk Wind Power Large Generator Interconnection Agreement to be effective 8/31/2012.

Filed Date: 8/28/12.

Accession Number: 20120828–5068.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER12–2533–000.

Applicants: KODE Novus I, LLC.

Description: Filing of Shared Facilities Agreement to be effective 4/27/2012.

Filed Date: 8/28/12.

Accession Number: 20120828–5073.

Comments Due: 5 p.m. ET 9/18/12.

Docket Numbers: ER12–2534–000.

Applicants: Southwestern Public Service Company.

Description: 8–28–12_RS145 SPS–LCEC Gen Agreement to be effective 9/1/2012.

Filed Date: 8/28/12.

Accession Number: 20120828–5079.

Comments Due: 5 p.m. ET 9/18/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–21962 Filed 9–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–961–000

Applicants: East Tennessee Natural Gas, LLC

Description: Imbalance Provision Cleanup to be effective 10/1/2012

Filed Date: 8/28/12

Accession Number: 20120828–5041

Comments Due: 5 p.m. ET 9/10/12

Docket Numbers: RP12–962–000

Applicants: Cheyenne Plains Gas Pipeline Company, L.

Description: Table of Contents Update to be effective 9/28/2012

Filed Date: 8/28/12

Accession Number: 20120828–5101

Comments Due: 5 p.m. ET 9/10/12

Docket Numbers: RP12–963–000

Applicants: Equitrans, L.P.

Description: Negotiated Rate Service Agreement—PDC Mountaineer, LLC to be effective 9/1/2012

Filed Date: 8/28/12

Accession Number: 20120828–5106

Comments Due: 5 p.m. ET 9/10/12

Docket Numbers: RP12–964–000

Applicants: Equitrans, L.P.

Description: Neg Rate Service Agreement—PDCM Amended Exh A to be effective 9/1/2012

Filed Date: 8/28/12

Accession Number: 20120828–5107

Comments Due: 5 p.m. ET 9/10/12

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–21964 Filed 9–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1736–001

Applicants: ITC Midwest LLC

Description: Compliance Filing of ITC Midwest to be effective 7/10/2012.

Filed Date: 8/27/12

Accession Number: 20120827–5101

Comments Due: 5 p.m. ET 9/17/12

Docket Numbers: ER12–2526–000

Applicants: AEP Texas Central Company

Description: Petronila Wind Farm PDA to be effective 7/31/2012.

Filed Date: 8/27/12

Accession Number: 20120827–5097

Comments Due: 5 p.m. ET 9/17/12

Docket Numbers: ER12–2527–000

Applicants: PJM Interconnection, L.L.C.

Description: Queue No. W3–122, Original Service Agreement No. 3394 to be effective 7/26/2012.

Filed Date: 8/27/12

Accession Number: 20120827–5100

Comments Due: 5 p.m. ET 9/17/12

Docket Numbers: ER12–2528–000

Applicants: High Mesa Energy, LLC

Description: Application for Market-Based Rate Authority to be effective 8/28/2012.

Filed Date: 8/27/12

Accession Number: 20120827–5138

Comments Due: 5 p.m. ET 9/17/12

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA12–6–000; *TS12–3–000*

Applicants: NaturEner Rim Rock Wind Energy, LLC

Description: Request for Waiver of Open Access Requirements of NaturEner Rim Rock Wind Energy, LLC.

Filed Date: 8/20/12

Accession Number: 20120820–5182

Comments Due: 5 p.m. ET 9/10/12

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD12–5–000

Applicants: North American Electric Reliability Corporation

Description: Errata of the North American Electric Reliability Corporation to Petition for Approval of an Interpretation to Reliability Standard CIP–002–4.

Filed Date: 8/21/12

Accession Number: 20120821–5012

Comments Due: 5 p.m. ET 9/4/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–21963 Filed 9–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP12–908–000]

TC Offshore, LLC; Notice Establishing Deadline for Comments

On August 29, 2012, TC Offshore, LLC (TC Offshore) filed a response to the Commission's August 16, 2012 Data Request in the captioned proceedings.

Notice is hereby given that participants in the captioned proceedings may file comments to TC Offshsore's Data Response on or before 5:00 p.m. Eastern time on Wednesday, September 6, 2012.

Dated: August 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–21909 Filed 9–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Extension of the Public Review and Comment Period and Announcement of an Additional Public Hearing for the Draft Surplus Plutonium Disposition Supplemental Environmental Impact Statement

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Extension of the public review and comment period and announcement of an additional public hearing.

SUMMARY: On July 27, 2012, the U.S. Department of Energy (DOE) published a notice of availability for the *Draft Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (SPD Supplemental EIS; DOE/EIS–0283–S2) for public review and comment. That notice stated that the public review and comment period would continue until September 25, 2012. DOE has decided to extend the public comment period by 15 days, and to hold an additional public hearing.

DATES: The public comment period is extended by 15 days from September 25, 2012 through October 10, 2012.

The additional public hearing will be held on Tuesday, September 18, 2012 in Española, NM.

ADDRESSES: The Draft SPD Supplemental EIS and reference material are available for review at National Nuclear Security Administration (NNSA) NEPA Web site at *http://www.nnsa.energy.gov/nepa/spdsupplementaleis.*

Please direct written comments on the Draft SPD Supplemental EIS to Ms. Sachiko McAlhany, SPD Supplemental EIS NEPA Document Manager, U.S. Department of Energy, P.O. Box 2324, Germantown, MD 20874–2324. Comments may also be submitted via email to *spdsupplementaleis@saic.com* or by toll-free fax to 877–865–0277. DOE will give equal weight to written, email, fax, telephone, and oral comments.

Comments, questions regarding the Supplemental EIS process, and requests to be placed on the SPD Supplemental EIS mailing list should be directed to Ms. McAlhany by any of the means given above or by calling toll-free 877–344–0513.

FOR FURTHER INFORMATION CONTACT: For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 800–472–2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the Internet through the DOE NEPA Web site at *http://www.energy.gov/nepa.*

SUPPLEMENTARY INFORMATION: On July 27, 2012, the U.S. Department of Energy (DOE) published a notice of availability for the *Draft Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (SPD Supplemental EIS; DOE/EIS–0283–S2) for public review and comment. (77 FR 44222) That notice stated that the public review and comment period would continue until September 25, 2012. DOE has decided to extend the public comment period by 15 days through October 10, 2012.

Also, in addition to the public hearings being conducted as announced in the notice of availability, DOE will hold one additional hearing on the Draft SPD Supplemental EIS at the following location:

• September 18, 2012 (5:30 p.m. to 8 p.m.) Northern New Mexico College, Española Campus, Center for Fine Arts Building, 921 N. Paseo de Oñate, Española, New Mexico 87532.

Individuals who would like to present comments orally at this hearing should register upon arrival at the hearing. Speaking time will be allotted by the hearing moderator to each individual wishing to speak to ensure that all who wish to speak have the opportunity to do so. DOE representatives will be available during an open house portion of these hearings to discuss the Draft SPD Supplemental EIS. Following a presentation by DOE, the public will have an opportunity to provide oral and written comments during the formal portion of the hearing.

The Draft SPD Supplemental EIS analyzes the potential environmental impacts of alternatives for disposition of 13.1 metric tons (14.4 tons) of surplus plutonium for which DOE has not made a disposition decision, including 7.1 metric tons (7.8 tons) of plutonium from pits that were declared excess to national defense needs. It also updates previous DOE NEPA analyses on plutonium disposition to consider additional options for pit disassembly and conversion, which entails processing plutonium metal components to produce an oxide form of plutonium suitable for disposition, and the use of mixed oxide (MOX) fuel fabricated from surplus plutonium in domestic commercial nuclear power reactors to generate electricity, including five reactors at two specific Tennessee Valley Authority (TVA) reactor plants. DOE is not revisiting the decision to fabricate 34 metric tons (MT) (37.5 tons) of surplus plutonium into MOX fuel in the MOX Fuel Fabrication Facility (MFFF) (65 FR 1608, January 11, 2000 and 68 FR 20134, April 24, 2003), now under construction at DOE's Savannah River Site (SRS) in South Carolina, and to irradiate the MOX fuel in commercial nuclear reactors used to generate electricity.

TVA is a cooperating agency on this SPD Supplemental EIS. TVA is considering the use of MOX fuel, produced as part of DOE's Surplus Plutonium Disposition Program, in its nuclear power reactors.

Comments on the Draft SPD Supplemental EIS may be submitted according to the instructions provided above under **ADDRESSES**. In preparing the final SPD Supplemental EIS, DOE will consider all comments presented at the hearing, comments received by fax or email and comments postmarked by the end of the comment period. DOE will consider comments received after that date to the extent practicable.

Issued in Washington, DC, on August 30, 2012.

Neile Miller,

Principal Deputy Administrator for the National Nuclear Security Administration.

[FR Doc. 2012–21983 Filed 9–5–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9724–6]

Clean Water Act: Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces EPA's decision to identify certain water quality limited waters and the associated pollutant to be listed pursuant to the Clean Water Act Section 303(d)(2) on New York's list of impaired waters, and requests public comment. Section 303(d)(2) requires that States submit, and EPA approve or disapprove, lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On August 16, 2012, EPA disapproved New York's decision to exclude the Lower Esopus Creek from its 2012 303(d) list. EPA evaluated existing and readily available data and information and concluded that the applicable narrative water quality standard for turbidity is being exceeded in the Lower Esopus Creek. Based on this evaluation, EPA has determined that the Lower Esopus Creek is not fully attaining the water quality standards established by New York State and should be included on the State's 303(d) list of impaired waters.

EPA is providing the public the opportunity to review its decision to add this water to New York's 303(d) list, as required by 40 CFR 130.7(d)(2). EPA will consider public comments before transmitting its final listing decision to the State.

DATES: Comments must be submitted to EPA on or before October 9, 2012.

ADDRESSES: Comments on the proposed decision should be sent to Sheri Jewhurst, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007, email *jewhurst.sheri@epa.gov,* telephone (212) 637–3035, facsimile (212) 637–3889. Oral comments will not be considered. Copies of EPA's letter explaining the rationale for EPA's decision concerning New York's list can be obtained by calling or emailing Ms. Jewhurst at the address above. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Jewhurst to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Sheri Jewhurst at (212) 631–3035 or at *jewhurst.sheri@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include

requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings, identify the pollutants causing the impairment, and identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, New York submitted its listing decisions under Section 303(d)(2) to EPA in correspondence dated March 30, 2012 and July 25, 2012. On August 16, 2012, EPA partially approved New York's submittal of the 303(d) list, and disapproved New York's decision to exclude Lower Esopus Creek from the 2012 list. EPA is soliciting public comment on the addition of this water to the State's list, as required by 40 CFR 130.7(d)(2).

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 28, 2012.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. 2012–22020 Filed 9–5–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank).

TIME AND PLACE: September 19, 2012 at 11 a.m. to 3 p.m. The meeting will be held at the Export-Import Bank in Room 326, 811 Vermont Avenue NW., Washington, DC 20571.

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee, and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

AGENDA: Presentation on recent developments in Sub-Saharan Africa markets by Export-Import Bank staff; an update on the Bank's on-going business development initiatives in the region; and Committee discussion of current challenges and opportunities for U.S. exporters.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 19, 2012, Richard Thelen, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 565–3515 or TDD (202) 565–3377.

FURTHER INFORMATION CONTACT: For further information, contact Richard Thelen, 811 Vermont Avenue NW., Washington, DC 20571, (202) 565–3515.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–22037 Filed 9–4–12; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 12–230; DA 12–1347]

Media Bureau Seeks Comment on TiVo's Request for Clarification and Waiver of the Commission's Audiovisual Output Requirement

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Media Bureau seeks comment on a petition for waiver and clarification of the Commission's rules filed by TiVo Inc. These comments are necessary to help the Media Bureau decide whether to grant TiVo's request. The intended effect of this action is to release an order that either grants or denies TiVo's request.

DATES: Submit comments on or before September 21, 2012. Submit reply comments on or before October 1, 2012.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: TiVo Inc. (''TiVo'') has filed a request pursuant to Sections 1.3, 76.7, and 76.1207 of the Commission's rules for waiver of part of Section 76.640(b)(4)(iii) of the Commission's rules. Section 76.640(b)(4)(iii) requires cable operators to ''ensure that the cable-operator-provided high definition set-top boxes, except unidirectional set-top boxes without recording functionality, shall comply with an open industry standard that provides for audiovisual communications including service discovery, video transport, and remote control command pass-through standards for home networking'' by December 1, 2012. This rule is designed to ensure that consumers will be able to connect consumer electronics devices that they own to set-top boxes that they lease from their cable operators for whole-home viewing and recording. TiVo also asks the Commission to clarify the meaning of the phrase ''open industry standard'' in the rule. TiVo seeks a waiver of 76.640(b)(4)(iii) for TiVo boxes that cable operators lease to subscribers. TiVo requests that this waiver last until 12 months after cable operators have deployed at least 100,000 Cisco set-top boxes and 100,000 Motorola set-top boxes that include an output that complies with Section 76.640(b)(4)(iii). TiVo maintains that waiver of ''an open standard'' implementation for cable operators with respect to TiVo boxes that cable operators lease to subscribers would cause no harm to interested parties and will benefit consumers. We seek comment on TiVo's request. Authority for this action is contained in 47 U.S.C. 154(i), 549, and 47 CFR 0.283, 1.3, and 76.7(b)(1).

This proceeding will be treated as ''permit but disclose'' for purposes of the Commission's ex parte rules. As a result of the permit-but-disclose status of this proceeding, ex parte presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.

Comments and oppositions are due September 21, 2012. Petitioner's reply is due October 1, 2012. All filings must be submitted in MB Docket No. 12–230. Pleadings sent via email to the Commission will be considered informal and will not be part of the official record. Interested parties will have access to comments online through the Commission's Electronic Comment Filing System (ECFS), and therefore we waive the requirements of Sections 76.7(b)(1) and 76.7(c)(1) that comments and oppositions be served on interested parties.

Comments may be filed using: (1) (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

Electronic Filers: Comments may be filed electronically using the Internet by

accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/or* the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: MB Docket No. 12–230. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov*, and include the following words in the body of the message: ''get form''. A sample form and instructions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC, 20554.

One copy of each pleading must be sent to Brendan Murray, Media Bureau, Room 4–A737, 445 12th Street SW., Washington, DC 20554 or *Brendan.Murray@fcc.gov.*

Copies of the Waiver Request and any subsequently filed documents in this matter are also available for inspection in the Commission's Reference Information Center: 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 418–0270.

Alternate formats of this Public Notice (computer diskette, large print, audio recording, or Braille) are available to persons with disabilities by contacting the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–7365 (TTY).

Federal Communications Commission.

Michelle Carey,

Deputy Chief, Media Bureau.

[FR Doc. 2012–21876 Filed 9–5–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011075–075.

Title: Central America Discussion Agreement.

Parties: Crowley Latin America Services, LLC.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes APL co. PTE Ltd. as a party to the agreement.

Agreement No.: 011426–052.

Title: West Coast of South America Discussion Agreement.

Parties: Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; Interocean Lines, Inc.; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd. (dba Ecuadorian Line); and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes APL Co. PTE Ltd. as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: August 31, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–21981 Filed 9–5–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Ambassador International, Ltd. (NVO & OFF), 22455 Powers Court, Sterling, VA 20166, Officers: John D. Morrissette, President (QI), Arthur E. Morrissette, IV, Vice President, Application Type: QI Change

Carico USA, LLC (NVO & OFF), 4801 Woodway Drive, #300 East, Houston, TX 77056, Officers: Francisco Gonzalez, Managing Member (QI), Raul Amprimo, Member, Application Type: New NVO & OFF License

Gemini Logistics, Inc. (NVO & OFF), 8535 Posey Road, Jacksonville, FL 32220, Officers: Colleen E. Delk, Vice President (QI), Patricia C. Martinez, President, Application Type: New NVO & OFF License

LV Shipping (USA) Inc. (NVO & OFF), 19051 Kenswick Drive, Suite 190, Humble, TX 77338, Officers: Joseph Carrion, President (QI), Christopher Lewin, Secretary, Application Type: New NVO & OFF License

O.K. Cargo Corp. (OFF), 1720 NW 9th Avenue, Miami, FL 33172, Officers: Jorge L. Garcia, President (QI), Nora Garcia, Vice President, Application Type: New OFF

Ocean World Lines, Inc. (NVO), 1983 Marcus Avenue, Suite 100, Lake Success, New York 11042, Officers: Roland Cardoza, Regional Vice President (QI), Robert Noonan, President, Application Type: Additional QI

Next Day Cargo, Inc. (NVO), 8805 NW 35th Lane, Doral, FL 33172, Officers: Ramiro A. Abreu, President (QI), Marina G. Abreu, Vice President, Application Type: Add OFF Service

Nica Mar Corp. (NVO & OFF), 6890 NW 35th Avenue, Miami, FL 33147, Officers: Amarilis Flores, Secretary (QI), Geraldine Jerez, President,

Application Type: New NVO & OFF License

Racon Line, Inc. (NVO), 15501 Texaco Avenue, Paramount, CA 90723, Officers: Maximiliaan Hoes, President (QI), Michele Blackmore, Vice President, Application Type: Name Change to CFR Rinkens, LLC

Radjames Mejia, Inc. dba MM Shipping (NVO), 1656–A 5th Avenue, Bay Shore, NY 11706, Officer: Radhames Mejia, President (QI), Application Type: New NVO License

RF International, Ltd. (OFF), 1983 Marcus Avenue, Suite 100, Lake Success, NY 11042, Officers: Roland Cardoza, Regional Vice President (QI), Robert Noonan, President, Application Type: Additional QI

By the Commission.

Dated: August 31, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–21958 Filed 9–5–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 5, 2012.

ADDRESSES: You may submit comments, identified by (FR 3066a, b, c, and d), by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Geoffrey R. Gerdes, Senior Economist, (202) 872–4953, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, Washington, DC 20551.

A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection 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.

Proposal to approve under OMB delegated authority the implementation of the following information collection:

Report title: Retail Payments Surveys.[1]

Agency form number: FR 3066a, b, c, and d.

OMB control number: 7100—to be assigned.

Frequency: FR 3066a, b, and c: triennial (once every three years) and FR 3066d: annual and on occasion.

Reporters: Depository and financial institutions, payment networks, payment processors, and payment instrument issuers.

Estimated reporting hours: FR 3066a: 49,000 hours; FR 3066b: 1,040 hours; FR 3066c: 450 hours; FR 3066d: 400 hours.

Estimated average hours per response: FR 3066a: 35 hours; FR 3066b: 8 hours; FR 3066c: 3 hours; FR 3066d: 8 hours.

Estimated number of respondents: FR 3066a: 1,400; FR 3066b: 130; FR 3066c: 150; FR 3066d: 50.

General description of report: The Federal Reserve is generally authorized

[1] The proposed surveys, supporting statement, and other documentation are available on the Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

to collect the information called for by the FR 3066 series pursuant to sections 2A and 12A of the Federal Reserve Act. In addition, survey questions in the FR 3066 are authorized pursuant to the Board's authority under one or more of the following statutes:

- Expedited Funds Availability Act section 609 (12 U.S.C. 4008)
- Electronic Fund Transfer Act section 904 (15 U.S.C. 1693b) and 920 (15 U.S.C. 1693o–2)
- Truth in Lending Act section 105 (15 U.S.C. 1604)
- The Check Clearing for the 21st Century Act section 15 (12 U.S.C. 5014)
- Federal Reserve Act section 11 (Examinations and reports, Supervision over Reserve Banks, and Federal Reserve Note provisions, 12 U.S.C. 248); section 11A (Pricing of Services, 12 U.S.C. 248a); section 13 (FRB deposits and collections, 12 U.S.C. 342); and section 16 (Issuance of Federal Reserve Notes, par clearance, and FRB clearinghouse, 12 U.S.C. 248–1, 360, and 411)

Additionally, depending upon the survey respondent, the information collection may be authorized under a more specific statute. Specifically, the Board is authorized to collect information from state member banks under section 9 of the Federal Reserve Act (12 U.S.C. 324); from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); from savings and loan holding companies under (12 U.S.C. 1467a(b)(3) and 5412), from Edge Act and agreement corporations under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625); and from U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)), and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)).

Obligation to Respond: Voluntary.

Confidentiality: Respondents to the various surveys are requested to report confidential business information, such as information requested in the FR 3066a (for depository and financial institutions) about the number and value of deposits in various customer account types, image check deposits, paper check deposits, ACH entries, wire transfers, debit and prepaid card transactions, credit card transactions, mobile payments, and transactions involving third-party fraud. The other surveys request similar types of confidential ''number and value'' information appropriate to the surveyed entities. For example, the Network, Processor, and Issuer Payments Surveys (FR 3066b) request the number, value, and type of transactions involving credit cards (both general-purpose and private-label), debit cards, and prepaid cards from respondents (card networks, card processors, and retail merchants). Only aggregate totals from the surveys, such as estimated national volumes and trends in different types and categories of payments, check distribution, and established and emerging payment instruments, are proposed to be publicly released.

Under exemption 4 of the Freedom of Information Act (''FOIA''), 5 U.S.C. 552(b)(4), ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' may be excluded from disclosure. The confidential business information collected voluntarily from individual respondents may be withheld, as release of such information would impair the Board's ability to collect such information in the future. Moreover, disclosure of such confidential business information could cause substantial competitive harm to the survey respondents. *See National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974).

Abstract: The Board proposes to implement the voluntary Retail Payments Surveys: Depository and Financial Institution Payments Survey (FR 3066a); Network, Processor, and Issuer Payments Surveys (FR 3066b); Check Sample Survey (FR 3066c); and Retail Payments Survey Supplement (FR 3066d).

These surveys would be designed to collect information needed to support the Federal Reserve System's role in the retail payments system.[2] The Federal Reserve plays a vital role in the U.S. payments system, helping to foster its safety and efficiency, and providing a variety of banking services to depository institutions and the federal government.[3]

The Board proposes to conduct these surveys in partnership with the Reserve Banks' Retail Payment Office (RPO), operated by the Federal Reserve Bank of Atlanta. These surveys would be the latest iteration in a series of surveys of depository institutions, payments networks, processors, and issuers, collectively called the Federal Reserve Payments Study (FRPS) that were conducted at 3-year intervals by the RPO from 2001 to 2010.[4]

The FR 3066a and the FR 3066b would collect information on the national volume (number and value) of major categories and subcategories of established and emerging methods of noncash payment from a nationally representative, stratified random sample of depository institutions and from a census of payments networks, processors, and issuers, respectively. These two surveys would also collect information on trends in different business arrangements and technologies connected with the initiation, authorization, collection, and processing of payments. In addition, the FR 3066a would collect the volumes of bank customers' cash withdrawals and deposits at retail branches, wholesale vaults, and automated teller machines (ATMs). The FR 3066b would collect information on cash substitution, such as the distribution of low-value purchases made with noncash instruments and the loading of cash onto other payment instruments.

The FR 3066c would collect data from samples of individual checks obtained from a sample of depository institutions.[5] The FR 3066d would collect payment volumes similar to those collected in the FR 3066a or the FR 3066b from a subset of respondents to obtain information about changes in volumes that may occur in the two years between triennial surveys.

In general, the FR3066a, b, and c surveys would be distributed in Q1

[2] While the Federal Reserve is involved with both retail and wholesale payments, these surveys are designed to collect information on retail payments and the systems or networks that are primarily used to make retail payments. Retail payments are generally for relatively small dollar amounts and often involve a depository institution's retail clients—individuals, businesses, and governments. Wholesale payments are generally for relatively large dollar amounts, and often involve a depository institution's large corporate customers or counterparties, including other financial institutions. Wholesale payments are not the main focus of the surveys, but may be included in cases where there is a need.

[3] For depository institutions, the Reserve Banks maintain accounts for reserve and clearing balances and provide various payment services, including collecting checks, electronically transferring funds, and distributing and receiving currency and coin. For the federal government, they act as fiscal agents. As such, the Reserve Banks maintain the Treasury Department's transaction account; pay Treasury checks; process electronic payments; and issue, transfer, and redeem U.S. government securities.

[4] The FR 3066a and the FR 3066b would be designed to be compatible with and a continuation of past triennial surveys on the retail payments system conducted by RPO in 2001, 2004, 2007, and 2010. Data from both surveys would be used to create aggregate estimates for 2012. Reports on past surveys are available at *http://frbservices.org/communications/payment_system_research.htm.* The Board has also published three Federal Reserve Bulletin articles on the studies in August 2002, Spring 2005, and October 2008.

[5] This survey would be similar to the Check Sample Studies, part of the FRPS, conducted by the RPO in 2001, 2007, and 2010. As with past studies, copies of checks or any information that would identify payers or payees on the checks would not be retained or used for any purpose other than estimating the aggregate proportions of different types of checks.

2013, and data collection would primarily take place during Q2 2013.

Depository and Financial Institution Payments Survey (FR 3066a)

The survey reference period (the time period for which respondents would report data) is proposed to be March 2013. Past FRPS surveys used a reference period of March and April, and data were reported separately for each month.

The Board specifically requests comment on whether reporting for March 2013 or another survey reference period is more feasible and/or useful, such as reporting data for the months of March and April 2013 combined.

The FR 3066a would comprise ten sections (respondents would only answer sections that apply to their institutions):

1. *Institution Profile:* Respondents would verify which affiliates are associated with their survey responses as of March 31, 2013, and provide corrections.

2. *Customer Accounts:* Respondents would report the number of and value of customers' deposits in transaction accounts, funds in prepaid card program accounts, and balances in credit card accounts broken out into subcategories. Transaction deposit accounts would be broken out into subcategories of consumer accounts and business/government accounts; prepaid card program accounts would be broken out into subcategories of customer accounts managed by the respondents' institutions and customer accounts managed by third parties; and credit card accounts would be broken out into subcategories of consumer accounts and business/government accounts. Respondents would also report the number of outstanding and active (during Q1 2013) payment cards associated with these accounts.

The Board specifically requests comment on the following:

i. How institutions refer to ''full service'' transaction deposit accounts (e.g. checking accounts, debit card accounts, etc.) to distinguish them from prepaid card accounts.

ii. Whether prepaid card-issuing depository institutions can reliably measure the number of end-user prepaid card accounts and prepaid cards outstanding for prepaid card programs managed by third parties.

iii. Whether it is more feasible and/or useful to ask for number of active cards outstanding or number of accounts with recent card activity for credit card, debit card, and prepaid card accounts.

iv. The most feasible and/or useful time period over which a payment card account should have payment or transaction activity to be considered active as well as what kinds of transactions, if any, should not be counted toward activity.

3. *Checks:*

a. *Check Payments:* Respondents would report the number and value of checks drawn on their institutions by subcategories needed to identify interbank checks and avoid double-counting correspondent volumes.

b. *Check Deposits:* Respondents would report the number and value of deposited checks, including the number and value of paper check deposits and image check deposits broken out into consumer client image capture, business customer client image capture, and correspondent checks. For image deposits, the section would also obtain information on the types of customer check image deposits accepted, including whether respondents' institutions accepted image deposits from customers using a remote scanner attached to a PC or point-of-sale device, smartphone or other mobile device, or ATM image capture (envelope-free deposits).

The Board specifically requests comment on whether institutions are able to report customer check image deposit volumes (number and value) into the categories listed above, or if a different type of categorization would be more feasible and/or useful.

c. *Outgoing Check Returns:* Respondents would report the number and value of outgoing returned checks.

4. *ACH:*

a. *Network ACH Entries:* Respondents would report the number and value of interbank ACH credits originated and ACH debits received through network operators, including the number and value of ''offset entries.''

b. *Direct Exchange ACH Entries:* Respondents would report the number and value of interbank ACH credits originated and debits received directly from other institutions rather than through network operators.

c. *In-House On-Us ACH Entries:* Respondents would report the number and value of in-house on-us credits originated and debits received by their institutions, including the number and value of ''offset entries.''

The Board specifically requests comment on whether, similar to section 3.a Check Payments above, including a breakout of ACH volumes (number and value) into subcategories needed to identify interbank ACH payments would help to avoid double-counting correspondent ACH volumes.

5. *Wire Transfers:* Respondents would report the number and value of wire transfers originated for nonbank customers (a type of retail payment), including the number and value of consumer and business/government wire transfers and the number and value of wire transfers to U.S. and foreign payees.

The Board specifically requests comment on the following:

i. Whether institutions can separate wire transfer origination volumes (number and value) by consumer and business/government customers.

ii. Whether institutions can separate wire transfer origination volumes (number and value) between domestic and foreign wire transfers.

6. *Debit and Prepaid Cards:* Respondents would report the number and value of debit and prepaid card transactions for cards issued by their institutions, including the number and value of signature and PIN transactions, the number and value of debit card transactions from transaction deposit accounts, and the number and value of prepaid card transactions. Respondents would also report the number and value of cash back transactions.

7. *Credit Cards:* Respondents would report the number and value of total credit card transactions for cards issued by their institutions, including the number and value of consumer and business/government credit card transactions and the number and value of cash advances.

8. *Cash:*

a. *Cash Withdrawals:* Respondents would report the number and value of cash withdrawals at branch locations, wholesale vaults, and ATMs, including the number and value of cash withdrawals at ATMs from transaction deposit accounts and prepaid card program accounts.

The Board specifically requests comment on whether institutions can report cash withdrawals separated by the access method categories listed above (e.g., over-the-counter, ATM, etc.), or whether another method of categorization would be more feasible and/or useful.

b. *Cash Deposits:* Respondents would report the number and value of cash deposits at branch locations, wholesale vaults, and ATMs.

c. *ATM Terminals:* Respondents would report the number of ATM terminals owned and sponsored by their institutions, including the number of ATM terminals at branch locations and offsite.[6]

[6] The Board believes that ATM networks require non-depository institution ATM owners to obtain sponsorship from depository institutions, and that networks view these transactions as belonging to the sponsoring institutions.

The Board specifically requests comment on the following:

i. Whether any non-depository institution ATM owners are able to directly connect through ATM networks or if they all require depository institution sponsorship.

ii. Whether institutions can report non-branded ATM terminals that they sponsor.

9. *Selected Payment Initiation Channels:* Respondents would report the number and value of online payments and mobile payments, including the number and value of relevant bill pay transactions and person-to-person transfers.

The Board specifically requests comment on the following:

i. How institutions define an ''online person-to-person funds transfer system.''

ii. Whether institutions can separately track payments initiated via mobile devices and distinguish mobile payments from other payments from the same accounts.

10. *Third-Party Payment Fraud:* Respondents would report the number and value of unauthorized check payments, unauthorized ACH credits and debits, unauthorized debit and prepaid card transactions, unauthorized credit card transactions, and unauthorized ATM cash withdrawals.

The Board specifically requests comment on whether institutions can report information on unauthorized transactions, as defined, or whether another definition of third-party fraud would be more feasible and/or useful to report.

Network, Processor, and Issuer Payments Surveys (FR 3066b)

The FR 3066b would cover seven categories of payment instruments, and comprise 16 different surveys, each specific to a particular payment instrument and/or respondent type (respondents would only answer surveys that apply to their organizations):

1. *General-Purpose Credit Card Network Survey:* Networks would report the number and value of general-purpose credit card transactions in 2012, including the number and value of credit card and charge card transactions, the number and value of transactions by payment initiation and authorization method, the number and value of consumer and business/government transactions, the number and value of transactions with U.S. payees and payees outside the U.S., and the number and value of transactions broken out by transaction dollar amount. Respondents would also report the number of credit and charge cards outstanding and the total number and value of general-purpose credit card transactions in 2010 and 2011.

The Board specifically requests comment on the following:

i. Whether networks can report cash advances received in physical cash form as a subset of total cash advances. (Total cash advances include not only physical cash advances but also other funds transfers such as an electronic transfer to a transaction deposit account or a payment made with credit account funds using a special check issued to the cardholder).

ii. What terms the industry most commonly uses for initiation methods such as near field communication (NFC), near-field radio-frequency identification (RFID), the Europay, MasterCard and Visa standard (EMV), and other chip technologies; what terms the industry uses for authorization methods that use dynamic data generated by a card or a network-sponsored online verification system; and which initiation and authorization methods are feasible and/or useful to report.

iii. Whether networks can distinguish between payments to domestic and foreign payees.

iv. The most feasible and/or useful time period over which a general-purpose credit card account should have payment or transaction activity to be considered active, as well as what kinds of transactions, if any, should not be counted toward activity.

2. *Private-Label Credit Card Retail Merchant Issuer Survey:* Retail merchant issuers would report the number and value of private-label credit card transactions in 2012, including the number and value of transactions by payment initiation method, the number and value of consumer and business/government transactions, and the number and value of transactions broken out by transaction dollar amount. Respondents would also report the number of private-label cards outstanding as of December 31, 2012, and the total number and value of private-label credit card transactions in 2010 and 2011. Retail merchant issuers would only report on transactions that they processed in-house so that transactions with outsourced processing are not double-counted in the Processor Survey.

The Board specifically requests comment on the most feasible and/or useful time period over which a private-label credit card account should have payment or transaction activity to be considered active, as well as what kinds of transactions, if any, should not be counted toward activity.

3. *Private-Label Credit Card Processor Survey:* Processors would report the number and value of private-label credit card transactions in 2012, including the number and value of transactions by payment initiation method, the number and value of consumer and business/government transactions, and the number and value of transactions broken out by transaction dollar amount. Respondents would also report the number of private-label cards outstanding as of December 31, 2012, and the total number and value of private-label credit card transactions in 2010 and 2011.

The Board specifically requests comment on the most feasible and/or useful time period over which a private-label card account should have payment or transaction activity to be considered active, as well as what kinds of transactions, if any, should not be counted toward activity.

4. *Debit Card and General-Use Prepaid Card Network Surveys:*

The Board specifically requests comment on the following:

i. What terms the industry most commonly uses for initiation methods such as NFC, near-field RFID, EMV, and other chip technologies; what terms the industry uses for authorization methods that use dynamic data generated by a card or a network-sponsored online verification system; and which initiation and authorization methods are most feasible and/or useful to report.

ii. Whether networks can distinguish between payments to domestic and foreign payees.

a. *Debit Card Network Survey:* Networks would report the number and value of debit card transactions in 2012, including the number and value of transactions by payment initiation and authorization method, the number and value of consumer and business/government transactions, the number and value of transactions with U.S. payees and payees outside the U.S., and the number and value of transactions broken out by transaction dollar amount. If a network could not report general-use prepaid card transactions separately from debit card transactions, the network would report both debit card and general-use prepaid card transactions on this survey.

b. *General-Use Prepaid Card Network Survey:* Networks would report the number and value of general-use prepaid card transactions in 2012, including the number and value of transactions by payment initiation and authorization method, the number and value of transactions with U.S. payees

and payees outside the U.S., and the number and value of transactions broken out by transaction dollar amount. A network would only complete this survey if it could report debit card transactions and general-use prepaid card transactions separately.

The Board specifically requests comment on how prepaid cards should be defined in order to develop a consistent definition among responses provided by networks and processors.

5. *General-Use Prepaid Card Processor Survey:* Processors would report the number and value of general-use prepaid card transactions in 2012, including the number and value of transactions by payment initiation method, the number and value of transactions with U.S. payees and payees outside the U.S., the number and value of transactions by prepaid card type, and the number and value of transactions broken out by transaction dollar amount. Respondents would also report the number and value of credits and loads to general-use prepaid cards in 2012 and the number of general-use prepaid cards outstanding as of December 31, 2012.

The Board specifically requests comment on the following:

i. How prepaid cards should be defined in order to develop a consistent definition among responses provided by networks and processors.

ii. The categories (e.g. gift, medical, payroll, etc.) by which processors can separate prepaid card volumes and which categories are most feasible and/or useful.

iii. Whether processors, issuers, or networks would be better able to report volumes by category.

iv. Whether processors can categorize fund deposits into prepaid card accounts (loads) by the payment instrument or method used to provide the funds.

v. The most feasible and/or useful time period over which a general-use prepaid card account should have payment or transaction activity to be considered active, as well as what kinds of transactions, if any, should not be counted toward activity.

6. *Private-Label Prepaid Card Issuer and Processor Survey:* Processors would report the number and value of private-label prepaid card transactions in 2012, including the number and value of transactions by payment initiation method, the number and value of transactions by prepaid card type, and the number and value of transactions broken out by transaction dollar amount. Respondents would also report the number and value of credits and loads to private-label prepaid cards in 2012, the number and value of cash withdrawals from private-label prepaid card accounts in 2012, the number of general-use prepaid cards outstanding as of December 31, 2012, and the total number and value of private-label prepaid card transactions in 2010 and 2011.

The Board specifically requests comment on the following:

i. The categories (e.g. gift, customer incentive, etc.) by which processors can separate prepaid card volumes and which categories are most significant.

ii. Whether processors can categorize deposits into prepaid card accounts (loads) by the payment instrument or method used to provide the funds.

iii. The most feasible and/or useful time period over which a private-label prepaid card account should have payment or transaction activity to be considered active, as well as what kinds of transactions, if any, should not be counted toward activity.

7. *Emerging Payments Processor Surveys:* The Board specifically requests comment on whether there are additional emerging payments that should be measured in the survey.

a. *Person-to-Person (P2P) & Money Transfer Processor Survey:* Processors would report the number and value of P2P and money transfer transactions in 2012, including the number and value of transactions with U.S. payees and payees outside the U.S., the number and value of transactions broken out by transaction dollar amount, the number and value of transactions by clearing system, and the number and value of transactions by origination channel.

The Board specifically requests comment on the following:

i. Whether networks can distinguish between payments to domestic and foreign payees.

ii. Whether processors are able to report payments by initiation channel (Web site, mobile, in-person, etc.).

b. *Online Bill Payment Processor Survey:* Processors would report the number and value of bank/intermediary and biller direct online bill payment transactions in 2012, including the number and value of transactions broken out by transaction dollar amount, the number and value of bank/intermediary online bill payment transactions by settlement system.

c. *Walk-In Bill Payment Processor Survey:* Processors would report the number and value of walk-in bill payment transactions in 2012, including the number and value of transactions broken out by transaction dollar amount and the number and value of transactions by settlement system. Respondents would also report on the funding method for walk-in bill payment transactions.

The Board specifically requests comment on whether processors are able to categorize by the payment instrument or method used to fund bill payment transactions.

d. *Deferred Payment Processor Survey:* Processors would report the number and value of deferred payment transactions in 2012, including the number and value of transactions broken out by transaction dollar amount and the number and value of transactions by merchant settlement system. Respondents would also report on the funding method for deferred payment transactions.

The Board specifically requests comment on whether processors are able to categorize by the payment instrument or method used to fund transactions.

e. *Private-Label ACH Debit Card Processor Survey:* Processors would report the number and value of private-label ACH debit card transactions in 2012, including the number and value of transactions by transaction dollar amount and the number and value of transactions by merchant settlement system. Respondents would also report on the number of private-label ACH debit cards outstanding as of December 31, 2012.

The Board specifically requests comment on the most feasible and/or useful time period over which a private-label ACH debit card account should have payment or transaction activity to be considered active, as well as what kinds of transactions, if any, should not be counted toward activity.

f. *Far-Field RFID Payment Processor Survey:* Processors would report the number and value of far-field RFID transactions in 2012, including the number and value of transactions by transaction dollar amount. These payments typically involve a vehicle-mounted transmitter used to automatically pay at tollbooths at bridges and roads. Respondents would also report on the funding method for far-field RFID transactions.

The Board specifically requests comment on whether processors are able to categorize by the payment instrument or method used to fund accounts and transactions.

g. *Secure Online Payment Processor Survey:* Processors would report the number and value of secure online payment transactions in 2012, including the number and value of transactions by transaction dollar amount.

h. *eCommerce PIN Debit Payment Processor Survey:* Processors would report the number and value of

eCommerce PIN debit payment transactions in 2012, including the number and value of transactions by transaction dollar amount.

i. *Mobile Wallet Processor Survey:* Processors would report the number and value of mobile wallet transactions in 2012, including the number and value of transactions by transaction dollar amount.

The Board specifically requests comment on which entities should receive the Mobile Wallet Processor Survey, and what range of products should be included.

Check Sample Survey (FR 3066c):

The FR 3066c would conduct a survey that in past FRPS surveys was referred to as the Check Sample Study (CSS). This survey would collect data on individual checks paid in 2012. Versions of the CSS were conducted in three out of four FRPS, including the first and last. The survey instrument design could be modified slightly, but is expected to be very similar to the instrument used in 2010. More importantly, the data collection method may be revised based on proposals received through a competitive bidding process. Past approaches included the collection of individual check information on multiple survey forms provided by a stratified sample of about 150 depository institutions and the use of survey forms by personnel employed by a contractor using images retrieved from a single institution that aggregated data from about 11 very large institutions. The decision on what approach to use for this survey will be based on an evaluation of the proposals received. Depository institutions would not be asked to complete the survey instrument.

The Board specifically requests comment on the following:

i. The most effective methods of selecting a random sample of check images from within depository institutions.

ii. The most valuable and feasible information to collect from the checks.

Retail Payments Survey Supplement (FR 3066d)

The FR 3066d data may be collected from networks, processors, and issuers in order to update the volume of major electronic payment instruments such as credit cards and prepaid cards, and emerging payment instruments. The surveys may include parts of the FR 3066a and b, or may involve new sections if new payment system developments emerge.

Board of Governors of the Federal Reserve System, August 31, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–21960 Filed 9–5–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 20, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Timothy C. Kohart,* Syracuse, Kansas, individually, including as co-trustee of the Valley Bancorp, Inc. ESOP, and Marilyn S. Kohart, Syracuse, Kansas, acting as a group in concert, to retain control of Valley Bancorp, Inc., and thereby indirectly control The Valley State Bank, both in Syracuse, Kansas.

Board of Governors of the Federal Reserve System, August 31, 2012.

Robert de V. Frierson,

Secretary of the Board.

[FR Doc. 2012–21949 Filed 9–5–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MV–2012–02; Docket No. 2012–0002; Sequence 14]

Public Availability of General Services Administration FY 2012 Federal Activities Inventory Reform (FAIR) Act Inventory

AGENCY: General Services Administration (GSA).

ACTION: Notice of Public Availability of Fiscal Year (FY) 2012 Federal Activities Inventory Reform (FAIR) Act Inventory.

SUMMARY: In accordance with the FAIR Act of 1998, Public Law 105–270, and Office of Management and Budget (OMB) Circular A–76, GSA is publishing this notice to advise the public of the availability of the FY 2012 FAIR Act Inventory. This inventory provides information on commercial and inherently governmental activities performed by GSA employees. The inventory has been developed in accordance with guidance issued on March 26, 2012 by the OMB's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-09_0.pdf.* The GSA has posted its inventory on the GSA.Gov homepage at the following link: *http://www.gsa.gov/fairact.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the FAIR Act Inventory should be directed to Paul F. Boyle in the Office of Acquisition Policy at (202) 501–0324 or *paul.boyle@gsa.gov.*

Dated: August 30, 2012.

Joseph A. Neurauter,

Deputy Chief Acquisition Officer/Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

[FR Doc. 2012–21863 Filed 9–5–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Marc Hauser, Ph.D., Harvard University: Based on the report of an investigation conducted by Harvard University (Harvard) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Marc Hauser, former Professor, Department of Psychology, Harvard, engaged in research misconduct in research supported by National Center for Research Resources (NCRR), National Institutes of Health (NIH), grants P51 RR00168–37 and CM–5–P40 RR003640–13, National Institute on Deafness and Other Communication Disorders (NIDCD), NIH, grant 5 R01

DC005863, and National Institute of Mental Health (NIMH), NIH, grant 5 F31 MH075298.

ORI found that Respondent engaged in research misconduct as follows:

• Respondent published fabricated data in Figure 2 of the paper Hauser, M.D., Weiss, D., & Marcus, G. ''Rule learning by cotton-top tamarins.'' *Cognition* 86:B15–B22, 2002, which reported data on experiments designed to determine whether tamarin monkeys habituated to a sound pattern consisting of three sequential syllables (for example AAB) would then distinguish a different sound pattern (i.e., ABB). Figure 2 is a bar graph showing results obtained with 14 monkeys exposed either to the same or different sound patterns than they were habituated to. Because the tamarins were never exposed to the same sound pattern after habituation, half of the data in the graph was fabricated. Figure 2 is also false because the actual height of the bars for the monkeys purportedly receiving the same test pattern that they had been habituated to totaled 16 animals (7.14 subjects as responding and 8.87 subjects as non-responding).

Respondent retracted the paper in 2010 (*Cognition* 117:106).

• In two unpublished experiments designed to test whether or not tamarin monkeys showed a greater response to certain combinations of unsegmented strings of consonants and vowels than others, Respondent falsified the coding of some of the monkeys' responses, making the results statistically significant when the results coded by others showed them to be non-significant. Respondent acknowledged to his collaborators that he miscoded some of the trials and that the study failed to provide support for the initial hypothesis. This research was never written up for publication.

• In versions of a manuscript entitled ''Grammatical Pattern Learning by Human Infants and Monkeys'' submitted to *Cognition, Science,* and *Nature,* Respondent falsely described the methodology used to code the results for experiments 1 and 3 on ''grammar expectancy violations'' in tamarin monkeys either by claiming coding was done blindly or by fabricating values for inter-observer reliabilities when coding was done by only one observer, in both cases leading to a false proportion or number of animals showing a favorable response.

Specifically, in three different experiments in which tamarin monkeys were exposed first to human voice recordings of artificial sounds that followed grammatical structure and then exposed to stimuli that conformed to or violated that structure, Respondent (1) provided an incorrect description of the coding methodology by claiming in the early versions of the manuscripts that ''two blind observers'' coded trials and a third coded trials to resolve differences, while all of the coding for one experiment was done just by the Respondent, and (2) in a revised manuscript, while Respondent no longer mentioned ''two blind observers, he claimed that ''Inter-observer reliabilities ranged from 0.85 to 0.90,'' a statement that is false because there was only one observer for one of the experiments.

Furthermore, in an earlier version of the manuscript, Respondent falsely reported that ''16 out of 16 subjects'' responded more to the ungrammatical rather than the grammatical stimuli for the predictive language condition, while records showed that one of the sixteen responded more to grammatical than ungrammatical stimuli, and one responded equally to grammatical and ungrammatical.

Respondent and his collaborators corrected all of these issues, including recoding of the data for some of the experiments prior to the final submission and publication in *Cognition* 2007.

• In the paper Hauser, M.D., Glynn, D., Wood, J. ''Rhesus monkeys correctly read the goal-relevant gestures of a human agent.'' *Proceedings of the Royal Society B* 274:1913–1918, 2007, Respondent falsely reported the results and methodology for one of seven experiments designed to determine whether rhesus monkeys were able to understand communicative gestures performed by a human.

Specifically, (1) in the ''Pointing without food'' trial, Respondent reported that 31/40 monkeys approached the target box while the records showed only 27 approached the target (both results are statistically significant), and (2) there were only 30 videotapes of the ''Pointing without food'' trials, while Respondent falsely claimed in the paper's Materials and Methods that ''each trial was videotaped.'' Respondent was not responsible for the coding, analyses, or archiving but takes full responsibility for the falsifications reported in the published paper. Respondent and one of his coauthors replicated these findings with complete data sets and video records and published them in *Proceedings Royal Society B* 278(1702):58–159, 2011.

• Respondent accepts responsibility for a false statement in the Methodology section for one experiment reported in the paper Wood, J.N., Glynn, D.D., Phillips, B.C., & Hauser, M.D. ''The perception of rational, goal-directed action in nonhuman primates.'' *Science* 317:1402–1405, 2007. The statement in the paper's supporting online material reads that ''All individuals are * * * readily identifiable by natural markings along with chest and leg tattoos and ear notches.'' In fact, only 50% of the subjects could be identified by this method, thus leading to the possibility of repeated testing of the same animal.

Respondent and one of his coauthers replicated these findings with complete data sets and video records and published them in *Science* 332:537, 2011 (*www.sciencemag.org/cgi/content/full/317/5843/1402/DC2*—published online 25 April 2011).

• Respondent engaged in research misconduct by providing inconsistent coding of data in his unpublished playback experiment with rhesus monkeys exploring an abstract pattern in the form of AXA by falsely changing the coding results where the prediction was that habituated animals were more likely to respond to an ungrammatical stimulus than a grammatical one. After an initial coding of the data by his research assistant, in which both Respondent and assistant agreed that an incorrect procedure was used, the Respondent recoded the 201 trials and his assistant coded a subset for a reliability check. The Respondent's codes differed from the original in 36 cases, 29 of them in the theoretically predicted direction, thereby producing a statistically significant probability of $p = <0.01$. Respondent subsequently acknowledged to his collaborators that his coding was incorrect and that the study failed to provide support for the initial hypothesis. This research was never written up for publication.

Respondent neither admits nor denies committing research misconduct but accepts ORI has found evidence of research misconduct as set forth above and has entered into a Voluntary Settlement Agreement to resolve this matter. The settlement is not an admission of liability on the part of the Respondent. Dr. Hauser has voluntarily agreed for a period of three (3) years, beginning on August 9, 2012:

(1) To have any U.S. Public Health Service (PHS)-supported research supervised; Respondent agreed that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval;

the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived, that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract, and that the text in such submissions is his own or properly cites the source of copied language and ideas; and

(3) To exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2012–21992 Filed 9–5–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Grand Opportunities in Medications Development for Substance-Related Disorders (U01).

Date: October 2, 2012.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Strategic Alliances for Medications Development to Treat Substance Use Disorders (RO1).

Date: October 2, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; I/START.

Date: November 6, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 30, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21889 Filed 9–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Initial Review Group Neuroscience Review Subcommittee.

Date: November 2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2081, Rockville, Md 20852, 301–443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: August 29, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21890 Filed 9–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: October 16, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 2019, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: August 29, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21891 Filed 9–5–12; 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; Member Conflict: Language, Communication, Perception and Cognition.

Date: September 28, 2012.

Time: 3 p.m. to 5 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: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: October 1, 2012.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise R Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: October 1–2, 2012.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroendocrinology, Neuroimmunology, Rhythms and Sleep Study Section.

Date: October 1–2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nursing and Related Clinical Sciences Overflow.

Date: October 1, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: October 1–2, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chicago O'Hare, Rosemont, 5500 N River Road, Rosemont, IL 60018.

Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Somatosensory and Chemosensory Systems Study Section.

Date: October 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: October 2, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 10–234: Neurotechnology Bioengineering Research Partnerships.

Date: October 2, 2012.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational and Basic Research to Control Itch in Humans.

Date: October 2, 2012.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites O'Hare—Rosemont, 5500 North River Road, Rosemont, IL 60018.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 12–053: Advanced Neural Prosthetics R&D.

Date: October 2, 2012.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapeutics.

Date: October 3, 2012.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov.*

(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: August 30, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21894 Filed 9–5–12; 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: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: September 24–25, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bacterial Pathogens.

Date: September 27, 2012.

Time: 9 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: Richard G Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Asthma, Lung Host Defense, and Cystic Fibrosis Applications.

Date: October 1, 2012.

Time: 1:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E Sinnett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

Date: October 1–2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Long Beach, 333 East Ocean Boulevard, Long Beach, CA 90802.

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahman-sesayl@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

Date: October 1–2, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Priscilla B Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Psychosocial Risk and Disease Prevention.

Date: October 2, 2012.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Micklin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: October 4, 2012.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn 824 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurogenetics, Epilepsy, Technology, and Neural Repair.

Date: October 4–5, 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: Keith Crutcher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: October 4–5, 2012.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Helix, 1430 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Genetics and Epidemiology: Collaborative Applications.

Date: October 5, 2012.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street NW., Washington, DC 20037.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, Bethesda, MD 20892, 301–435–0694, *voglergp@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: August 30, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21893 Filed 9–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Program Project Grant in Hypoxia and Sleep Medicine.

Date: September 28, 2012.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 9201, Bethesda, MD 20892.

Contact Person: Shelley S Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, *ssehnert@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 30, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–21892 Filed 9–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; OKNM 119314]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 119314, Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease OKNM 119314 from the lessee Jones Energy, Ltd., for lands in Woodward County, Oklahoma. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: JulieAnn Serrano, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at 505–954–2149. 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 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: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year and 16–2/3 percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the lease and $159 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease OKNM 119314, effective the date of termination, December 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

JulieAnn Serrano,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2012–21934 Filed 9–5–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–HPPC–10580; 4350–HAMP–409]

Record of Decision for the General Management Plan/Final Environmental Impact Statement, Hampton National Historic Site, Maryland

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 102 (2)(c) of the National Environmental Policy Act of 1969 (NEPA), the National Park Service (NPS) announces the availability of the Record of Decision for the Final General Management Plan and Environmental Impact Statement (GMP/EIS), Hampton National Historic Site, Maryland. As soon as practicable, the NPS will begin to implement the preferred alternative as contained in the Final GMP/EIS issued by the NPS on March 23, 2012, and summarized in the Record of Decision. Copies of the Record of Decision may be obtained from the contact listed below or online at the park's Web site (*http://www.nps.gov/hamp*) or the NPS Planning, Environment, and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/hamp*).

FOR FURTHER INFORMATION CONTACT: Tina Orcutt, Superintendent, Hampton National Historic Site, 535 Hampton Road, Towson, Maryland 21286–1397, telephone (410) 823–1309 ext. 101.

SUPPLEMENTARY INFORMATION: On April 23, 2012, the Regional Director of the NPS's Northeast Region signed the Record of Decision selecting Alternative 3 as the approved General Management Plan (GMP) for Hampton National Historic Site (NHS). The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park

resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

The selected alternative, Alternative 3—Broadening the Hampton Experience, was identified as the agency's preferred alternative in the Final GMP/EIS. Under this alternative, the visitor experience will be expanded to include the entire story of the park, from its beginnings in the 18th century to its heyday in the 19th century, and through the changes of activity and ownership in the 20th century. It will broaden the stories to include all those who lived and worked at the mansion, the plantations, and related Ridgely family enterprises. It will provide visitor services and accommodate park operations within the historic and modern buildings existing on the property, including a new collections storage building and a small visitor contact building in the Support Zone on the mansion side of the property.

Modern and historic buildings will be rehabilitated to provide for visitor services—orientation, group programming, restrooms and bookstore—along with limited storage, and administrative and partnership offices, all within walking distance of the mansion. While this approach could disperse interpretation and administrative functions throughout the park, every effort will be made to group these operational functions near one another to enhance the 'campus feeling,' encourage organizational efficiency, and minimize their intrusion into the historic scene.

The modular buildings currently housing administrative and partner offices will be removed. One critical feature missing from the landscape and essential to the visitor experience, the corn crib, will be reconstructed, if Department of the Interior/NPS documentation needs are met in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and used for interpretation on the farm side. Relocation of the modern entrance drive on the mansion side and changes to the access road to the farm will provide safer access to new visitor orientation areas on both sides of Hampton Lane.

Exhibits, media, programs, and scholarship will reflect the breadth of lives and events experienced by all of Hampton's residents and workers, free and enslaved, and will connect those stories with visitors' lives today. Park boundaries will remain unchanged, although minor adjustments will be considered through donation and willing seller acquisitions.

The NPS selected Alternative 3 because it best fulfills the purposes of the park and conveys the greatest number of beneficial results in comparison with the other alternatives. The selected alternative will expand the visitor experience to include the entire story of the park and would broaden the stories to include all those who lived and worked at the estate. It will provide visitor services and accommodate park operations, including group activities and tours, while preserving park resources. Partnerships will enhance relevance of the park to local visitors and better enable the NPS to respond to concerns of local residents, preservation organizations, academics, and the general public about how the park is managed. Overall, the selected alternative provides the highest degree of protection of the park's natural and cultural resources and it provides the most exceptional opportunities for visitors. In addition, the selected alternative offers the best value balancing costs against improvements to preservation and visitor services.

This planning process was initiated in 1998 and included extensive involvement with key stakeholders, agencies, resource experts, and members of the public. Information was disseminated through newsletters and press releases, and all interested parties were provided with opportunities to provide input and feedback during public meetings, workshops, and document review periods. The Draft GMP/EIS was available for public and agency review from October 11, 2010, through December 24, 2010, with three public open houses were held in November 2010. The Final GMP/EIS responded to, and incorporated, agency and public comments received on the Draft GMP/EIS. No changes were made to the alternatives or to the impact analysis presented in the Draft GMP/EIS; therefore, Alternative 3 remained the NPS Preferred Alternative and the environmentally preferred alternative in the Final GMP/EIS.

Dated: August 1, 2012.

Michael A. Caldwell,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. 2012–21955 Filed 9–5–12; 8:45 am]

BILLING CODE 4312–56–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–BITH–10384; 7880–726]

Minor Boundary Revision at Big Thicket National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: Notice is hereby given that, pursuant to the Act of October 11, 1974 (Pub. L. 93- 439, 88 Stat. 1245), the boundary of Big Thicket National Preserve is modified to include 9 tracts of lands listed as follows: Tract 119–07, 123.07 acres; Tract 219–12, 6.45 acres; Tract 219- 13, 177.28 acres; Tract 221–15, 8.51 acres; Tract 221–16, 4.29 acres; Tract 224–16, 648.01 acres; Tract 225–20, 41.40 acres; Tract 227–04, 52.74 acres; and Tract 230–01, 1,141.87 acres; for a total of 2,203.62 acres. These lands are located in Hardin County, Polk County, and Tyler County, Texas, immediately adjacent to the existing boundary of Big Thicket National Preserve. The boundary revision is depicted on Map No. 175/106,913A dated August, 2011. The map is available for inspection at the following locations: National Park Service, Intermountain Region Land Resources Program Center, 12795 West Alameda Parkway, Denver, Colorado 80225–0287 and National Park Service, Department of the Interior, Washington, DC 20240.

DATES: The effective date of this boundary revision is September 6, 2012.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief Realty Officer, Intermountain Region Resources Program Center, 12795 West Alameda Parkway, Denver, Colorado 80225–0827, at (303) 969–2610.

SUPPLEMENTARY INFORMATION: The Act of October 11, 1974, as amended, established the Big Thicket National Preserve and provided that after notifying the House Committee on Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make this boundary revision. The Committees have been notified of this boundary revision.

This boundary revision will make a significant contribution toward the preservation and protection of the ecological crossroads of Southeast Texas for which the preserve was established. The acquisition of these parcels will provide connectivity between the various units and will aid in maintaining wildlife migration corridors and the management of the park. These

lands provide some of the most outstanding recreational opportunities for wetland canoeing within the National Park Service System, and include significant biological and geological diversity.

Dated: August 23, 2012.

Colin Campbell,

Deputy Regional Director, Intermountain Region.

[FR Doc. 2012–21925 Filed 9–5–12; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–10876; 2410–OYC]

Temporary Concession Contract for the Operation of Lodging, Food and Beverage and Retail Services in Canyon de Chelly National Mounument

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service intends to award a temporary concession contract to a qualified person for the conduct of certain visitor services within Canyon de Chelly National Mounument for a term not to exceed 3 years. The visitor services include lodging, food and beverage and retail.

DATES: January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Jennifer Bonnett, Intermountain Regional Concession Chief, Intermountain Region, 12795 W. Alameda Parkway, Denver, CO, 80225; Telephone (303) 969–2661, by email at *Jennifer_bonnett@nps.gov.*

SUPPLEMENTARY INFORMATION: The National Park Service will award the temporary contract to a qualified person (as defined in 36 CFR 51.3) under TC–CACH001–13. The National Park Service has determined that a temporary concession contract not to exceed 3 years is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services.

Authority: This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals.

Dated: August 10, 2012.

Peggy O'Dell,

Deputy Director.

[FR Doc. 2012–21937 Filed 9–5–12; 8:45 am]

BILLING CODE 4312–53–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–780]

Certain Protective Cases and Components Thereof; Commission Determination To Review a Final Initial Determination Finding a Violation of the Tariff Act of 1930; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on June 29, 2012, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado (''Otter''). 76 FR 38417 (June 30, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of some or all of the claims of United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and claims 1, 5–7, 13, 15, 17, 19–21, 23, 25, 27, 28, 30–32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (''the '122 patent''); and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. *Id.* The notice of investigation named the following respondents: A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (''A.G. Findings''); AFC Trident Inc. of Chino, California (''AFC Trident''); Alibaba.com Hong Kong Ltd. of Hangzhou, China (''Alibaba.com''); Anbess Electronics Co. Ltd. of Schenzhen, China (''Anbess''); Cellairis Franchise, Inc. of Alpharetta, Georgia (''Cellairis''); Cellet Products of Sante Fe Springs, California (''Cellet''); DHgate.com of Beijing, China (''Dhgate.com''); Griffin Technology, Inc. of Nashville, Tennessee (''Griffin''); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (''Guangzhou Evotech''); Hard Candy Cases LLC of Sacramento, California (''Hard Candy''); Hoffco Brands, Inc. of Wheat Ridge, Colorado (''Hoffco''); Hong Kong Better Technology Group Ltd. of Shenzhen, China (''Better Technology Group''); Hong Kong HJJ Co. Ltd. of Shenzhen, China (''HJJ''); Hypercel Corporation of Valencia, California (''Hypercel''); InMotion Entertainment of Jacksonville, Florida (''InMotion''); MegaWatts Computers, LLC of Tulsa, Oklahoma (''MegaWatts''); National Cellular of Brooklyn, New York (''National Cellular''); OEMBargain.com of Wantagh, New York (''OEMBargain.com''; One Step Up Ltd. of New York, New York (''One Step Up''); Papaya Holdings Ltd. of Central, Hong Kong (''Papaya''); Quanyun Electronics Co., Ltd. of Shenzhen, China (''Quanyun''); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (''Star & Way''); Sinatech Industries Co., Ltd. of Guangzhou City, China (''Sinatech''); SmileCase of Windsor Mill, Maryland (''SmileCase''); Suntel Global Investment Ltd. of Guangzhou, China (''Suntel''); TheCaseInPoint.com of Titusville, Florida (''TheCaseInPoint.com''); TheCaseSpace of Fort Collins, Colorado (''TheCaseSpace''); Topter Technology Co., Ltd. of Guangdong, China (''Topter''); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (''Trait Technology''). *Id.* With respect to accused products by Respondent Griffin, Otter asserted only the '122 patent.

On August 3, 2011, the ALJ issued an ID granting Otter leave to amend the complaint and notice of investigation to add Global Cellular, Inc. of Alpharetta, Georgia (''Global Cellular'') as a

respondent. *See* Order No. 3 (August 3, 2011). The Commission determined not to review the order. *See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant's Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: One Step Up, InMotion, Hard Candy, DHGate.com, Alibaba.com, A.G. Findings, Cellairis, Global Cellular, AFC Trident, Better Technology Group, and OEMBargain.com. The following respondents were found in default: Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, Cellet, TheCaseSpace, MegaWatts, Hypercel, Star & Way, SmileCase, TheCaseInpoint.com, and National Cellular (collectively ''Defaulting Respondents''). Griffin is the only remaining respondent not found in default, and the only respondent that appeared before the Commission.

On June 29, 2012, the ALJ issued his final ID, finding a violation of section 337 by Griffin and the Defaulting Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. ID at 45–46. The ALJ also found that the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)) has been satisfied. *Id.* at 38–45. Regarding infringement, the ALJ found that the Defaulting Respondents' accused products infringe the asserted claims of the asserted patents and the asserted trademarks. *Id.* at 62–88. The ALJ further found that Griffin's accused products, the Griffin survivor for iPad 2 and Griffin Explorer for iPhone 4, literally infringe the asserted claims of the '122 patent but that the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the '122 patent. *Id.* at 64–78. The ALJ concluded that an industry exists within the United States for the asserted patents and trademarks as required by 19 U.S.C. 1337(a)(2). *Id.* at 89–108.

The ID includes the ALJ's recommended determination on remedy and bonding. The ALJ recommended that in the event the Commission finds a violation of section 337, the Commission should issue a general exclusion order directed to infringing articles. *Id.* at 118. The ALJ found that there has been a widespread pattern of unauthorized use of the asserted patents and that certain business conditions exist that warrant a general exclusion order. *Id.* at 116. The ALJ also recommended issuance of cease and desist orders directed to the defaulting respondents, recommending that the cease and desist order should encompass the Defaulting Respondents' Internet activities as well. *Id.* at 120. Regarding Griffin, the ALJ found that the record evidence establishes that it has commercially significant amounts of infringing protective cases in inventory in the United States and recommended issuing a cease and desist order directed to those infringing products. *Id.* With respect to the amount of bond that should be posted during the period of Presidential review, the ALJ recommended that if the Commission finds a violation of section 337, it should set a bond of 331.80 percent of entered value for tablet cases and 195.12 percent for non-tablet cases for infringing products of the Defaulting Respondents imported. For Griffin's infringing products, the ALJ recommended setting a bond of 12.45 percent for tablet cases and no bond for non-tablet cases imported during the period of Presidential review.

On July 16, 2012, Otter filed a petition for review of the ID. That same day, the Commission investigative attorney filed a petition for review. On July 17, 2012, Griffin filed a petition for review (the Commission granted Griffin's motion for leave to file its petition one day late). On July 24, 2012, the parties filed responses to the petitions for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ALJ's finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent. The Commission has determined not to review any other issues in the ID.

The parties are requested to brief their positions on the issue under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Does the '122 patent teach that the shape identified as ''switch opening'' and the shapes identified as ''grooves'' are mutually exclusive?

2. Is the feature identified in the '122 patent as a ''switch opening'' identical to the feature in the Griffin Survivor for iPod touch Mr. Anders identified as a ''groove''? *See* CX–1 at page 52 (reproduced in ID at 69).

3. Does the ''groove'' limitation, as construed by the ALJ, read on the tab/groove features identified by Mr. Anders and located at the top portion of the Survivor for the iPod Touch?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy on the public interest. The factors the Commission will consider are the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file

written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, OUII, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on September 14, 2012. Initial submissions are limited to 100 pages, not including any attachments or exhibits related to discussion of the remedy, bonding or public interest. Reply submissions must be filed no later than the close of business on September 21, 2012. Reply submissions are limited to 50 pages, not including any attachments or exhibits related to discussion of the remedy, bonding or public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–754'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_ filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: August 30, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–21908 Filed 9–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–709 (Third Review)]

Certain Seamless Carbon and Alloy Steel; Standard, Line, and Pressure Pipe From Germany

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on certain seamless carbon and alloy steel standard, line, and pressure pipe from Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on April 2, 2012 (77 FR 19711) and determined on July 6, 2012, that it would conduct an expedited review (77 FR 42763, July 20, 2012).

The Commission transmitted its determination in this review to the Secretary of Commerce on August 30, 2012. The views of the Commission are contained in USITC Publication 4348 (August 2012), entitled *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany: Investigation No. 731–TA–709 (Third Review).*

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Deanna Tanner Okun did not participate in this review. Commissioner Daniel R. Pearson did not vote in this review.

Issued: August 31, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–21923 Filed 9–5–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 28, 2012, a proposed Consent Decree in *United States* v. *Cornell-Dubilier Electronics, Inc.,* Civil Action No. 12–cv–05407 JLL–MAH, was lodged with the United States District Court for the District of New Jersey.

The proposed Consent Decree resolves the United States' and the State of New Jersey's cost recovery and natural resource damages claims against Cornell-Dubilier Electronics, Inc. (''CDE'') under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.,* relating to the Cornell-Dubilier Electronics, Inc. Superfund Site (''Site'') located in South Plainfield, New Jersey.

In the proposed Consent Decree, CDE and the United States and New Jersey agree to a stipulated judgment amount, 80 percent of the sum of the response cost and natural resource damage claims of the United States and New Jersey, or $367,453,449. CDE has agreed to pay, on a sliding scale, between 75 and 100 percent of insurance recoveries it receives to the United States and New Jersey. In addition to the potential recovery of insurance proceeds, CDE will make payments to the United States and New Jersey over three years totaling $1.11 million. All of these CDE payments will be divided between EPA, New Jersey, and the natural resource trustees. CDE will also place, as necessary, up to a total of $3.25 million into an escrow account to fund its state court insurance litigation. Finally, the Decree also resolves potential contribution claims and the State's cost claims against the Department of Defense and the General Services Administration. The federal agencies will pay $16,282,685 toward the United States' and the State's total past and estimated future response costs and natural resource damages.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matter as *United States* v. *Cornell-Dubilier Electronics, Inc.,* D.J. Ref. Number 90–11–2–08223/2.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting by mail from the Consent Decree Library a copy of the proposed Consent Decree only, please so note and enclose a check in the amount of $15.00 (25 cents per page reproduction cost for the 60 page proposed Consent Decree) payable to the U.S. Treasury. If requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 2012–21900 Filed 9–5–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,575; TA–W–81,575A; TA–W–81,575B; *et al.*]

Notice of Affirmative Determination Regarding Application for Reconsideration

TA–W–81,575
WIPRO LIMITED, WIPRO TECHNOLOGIES, ALLIANCE MANAGERS, INCLUDING WORKERS WORKING REMOTELY IN NEW JERSEY, EAST BRUNSWICK, NEW JERSEY
TA–W–81,575A
WIPRO LIMITED, WIPRO TECHNOLOGIES, ALLIANCE MANAGERS, INCLUDING WORKERS WORKING REMOTELY IN ILLINOIS, OAKBROOK TERRACE, ILLINOIS
TA–W–81,575B
WIPRO LIMITED, WIPRO TECHNOLOGIES, ALLIANCE MANAGERS, INCLUDING WORKERS WORKING REMOTELY IN CALIFORNIA, MOUNTAIN VIEW, CALIFORNIA
TA–W–81,575C
WIPRO LIMITED, WIPRO TECHNOLOGIES, ALLIANCE MANAGERS, WORKERS WORKING REMOTELY IN GEORGIA, ATLANTA, GEORGIA
TA–W–81,575D
WIPRO LIMITED, WIPRO TECHNOLOGIES, ALLIANCE MANAGERS, WORKERS WORKING REMOTELY IN WASHINGTON, BELLEVUE, WASHINGTON
TA–W–81,575E
WIPRO LIMITED, WIPRO TECHNOLOGIES, ALLIANCE MANAGERS, WORKERS WORKING REMOTELY IN TEXAS, ADDISON, TEXAS
TA–W–81,575F
WIPRO LIMITED, WIPRO TECHNOLOGIES, ALLIANCE MANAGERS, WORKERS WORKING REMOTELY IN MASSACHUSETTS, BOSTON, MASSACHUSETTS

On its own motion, the Department of Labor will conduct an administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Wipro Limited, Wipro Technologies, Alliance Managers, East Brunswick, New Jersey (TA–W–81,575), Oakbrook Terrace, Illinois (TA–W–81,575A), Mountain View, California (TA–W–81,575B), Atlanta, Georgia (TA–W–81,575C), Bellevue, Washington (TA–W–81,575D), Addison, Texas (TA–W–81,575E), and Boston, Massachusetts (TA–W–81,575F) (hereafter collectively referred to as ''Wipro''). The Department's Notice of negative determination was published in the **Federal Register** on July 10, 2012 (77 FR 40642). The workers are engaged in employment related to the supply of sales of alliance related services or products through sales employees of the company.

The negative determination was based on the Department's findings of no imports by Wipro of services like or directly competitive with those supplied by the subject worker group and no shift to a foreign country by Wipro in the supply of such services. A customer survey was not conducted, as the services supplied are for internal purposes only.

The initial investigation also revealed that Wipro is neither a Supplier to, nor acts as a Downstream Producer for, 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), and that Wipro has not been publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

The Department's review of the administrative record revealed a discrepancy in the locations identified by Wipro and those identified by the Department in the determination.

Conclusion

The Department has carefully reviewed 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.

Signed at Washington, DC, this 23rd day of August, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–21871 Filed 9–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM), Extension Without Revisions.

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the 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 [44 U.S.C. 3506(c)(2)(A)]. This program helps 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.

ETA is soliciting comments concerning the continuation of collection of data about the accuracy of paid and denied UI claims, which is accomplished through the BAM survey. The Department's BAM information collection authority, under Office of Management and Budget (OMB) number

1205–0245, is scheduled to expire on 11/30/2012.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 5, 2012.

ADDRESSES: Submit written comments to Andrew Spisak, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3196 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3975. Email: *spisak.andrew@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Workforce Agencies (SWAs) except the U.S. Virgin Islands have been required by regulation at 20 CFR Part 602 to operate BAM programs to assess the accuracy of their UI benefit payments in three programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-servicemembers (UCX). Beginning in 2001, BAM was modified to include the sampling and investigation of UI claims denied for monetary, separation, or nonseparation issues.

BAM is one of the tools the Department uses to measure and reduce waste, fraud, and abuse in the UI program. By investigating small representative weekly samples of both paid and denied UI claims, each state is able to estimate reliably the number and dollar value of proper and improper payments; the number of proper and improper denials of claims for UI benefits; the rates of occurrence of these proper and improper payments and denials; and the error types, error causes, and the parties that are responsible for the errors.

Paid Claims Accuracy (PCA). Each week SWAs select random samples of both intrastate and interstate original payments (including combined wage claims) made for a week of UI benefits under the State UI, UCX or UCFE programs. A sample of 360 cases per year is pulled in the ten states with the smallest UI program workloads (defined as the average annual UI weeks paid during the last five years) and 480 cases per year in the other states. State BAM staff audit each selected claim, examining all aspects of a claimant's eligibility to receive UI benefits during the sampled week. The findings are entered into an automated database that is maintained on a computer located in each state.

Denied Claims Accuracy (DCA). Each week states select random samples from three separate sampling frames constructed from the universes of UI claims for which eligibility was denied for monetary, separation and nonseparation reasons. All states sample a minimum of 150 cases of each denial type in each calendar year. State BAM staff review agency records and contact claimants, employers, and all other relevant parties to verify information in agency records or obtain additional information pertinent to the determination that denied eligibility for UI benefits. Unlike the investigation of paid claims, in which all prior determinations affecting claimant eligibility for the compensated week selected for the sample are evaluated, the investigation of denied claims is limited to the issue upon which the denial determination is based. The findings are entered into an automated database that is maintained on a computer located in each state.

The Department maintains a database of each state's BAM paid and denied claims cases, minus any personally identifying information. The Department uses BAM data to measure state performance with respect to UI payment integrity and to meet the Department's reporting requirements of the Improper Payments Information Act of 2002 (IPIA), the Improper Payments Elimination and Recovery Act of 2010 (IPERA), and the Government Performance and Results Act (GPRA). The Department also relies heavily on BAM data for information on UI operations, such as claims filing method, UI wage replacement rates, and claimant characteristics. The results of the BAM survey are reported annually on the ETA web site at the following link: *http://oui.doleta.gov/unemploy/.*

II. Review Focus

The Department 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

Type of Review: extension without changes.

Title: Unemployment Insurance Benefit Accuracy Measurement.

OMB Number: 1205–0245.

Affected Public: State Workforce Agencies (Primary), individuals, businesses, and not-for-profit institutions.

Form(s): BAM State Operations Handbook (ET Handbook 395, 5th edition.

Total Annual Respondents: 179,145.2.

Annual Frequency: BAM samples are selected weekly; the BAM data collection instrument is updated continuously as the audits are conducted.

Average Time per Response: 10.09 hours. This estimate is a weighted average.

Estimated Total Annual Burden Hours: 476,013.2.

Total Annual Burden Cost for Respondents: $18,870,582.59.

BAM PCA/DCA Data Annual Collection Burden per State Workforce Agency

	Paid claims	Monetary denied claims	Separation denied claims	Non-separation denied claims	Total
Cases	457*	150	150	150	907
Respondents/Case	4.65	3.10	3.10	2.6	
Hours/Case	12.59	7.85	7.85	6.97	

BAM PCA/DCA DATA ANNUAL COLLECTION BURDEN PER STATE WORKFORCE AGENCY—Continued

	Paid claims	Monetary denied claims	Separation denied claims	Non-separation denied claims	Total
Total Respondents	2125.1	465	465	390	3445.10
Total Hours	5753.6	1177.5	1177.5	1045. 5	9154.1

* Average for all 52 State Workforce Agencies (SWAs). The 10 smallest states in terms of UI weeks paid sample at the rate of 360 cases per year; the other 42 states sample at the rate of 480 cases per year.

52 SWAs × 3,445.1 respondents = 179,145.2 respondents

52 SWAs × 9,154.1 hours = 476,013.2 hours

ANNUAL PCA/DCA TOTAL COST BY RESPONDENT

Cost summary	Paid claims	Denied claims	Cost per state	Cost—52 SWAs
SWA Staff	$201,186.02	$130,515.84	$331,701.86	$17,248,497
Claimants	3,313.25	2,463	128,076	300,365
Employers + 3rd Parties	20,402.67	5,015.34	25,418.01	1,321,720.67
Total All Costs	224,901.94	137,994.18	485,195.87	18,870,582.59

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 29th day of August, 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–21861 Filed 9–5–12; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for the Extension With Minor Revisions of the Information Collection for Petition and Investigative Data Collection Requirements for the Trade Act of 1974, as Amended (OMB Control Number 1205–0342)

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the 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 [44 U.S.C. 3506(c)(2)(A)]. This program helps 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, ETA is soliciting comments concerning the proposed extension, with minor revisions, of data collections using the ETA 9042A, Petition for Trade Adjustment Assistance (1205–0342), its Spanish translation ETA 9042a (1205–0342), and its On-Line version ETA 9042A–1 (1205–0342); ETA 9043a, Business Data Request—Article (1205–0342); ETA 9043b, Business Data Request—Service (1205–0342); ETA 8562a, Business Customer Survey (1205–0342); ETA 8562a, Business Customer Survey (1205–0342); ETA 85622a-1, Business Second Tier Customer Survey (1205–0342); ETA–8562b, Business Bid Survey (1205–0342); and ETA 9118, Business Information Request (1205–0342). The current expiration date is January 31, 2013.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 5, 2012.

ADDRESSES: Submit written comments to Caroline Hertel, Office of Trade Adjustment Assistance, Room N–5428, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–963–3236 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3584. Email: *Hertel.Caroline@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Section 221(a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, authorizes the Secretary of Labor (Secretary) and the governor of each state to accept petitions for certification of eligibility to apply for Trade Adjustment Assistance (TAA). The petitions may be filed by a group of workers, their certified or recognized union or duly authorized representative including the employers of such workers and American Job Centers, sometimes known locally as One-Stop Career Centers or by a different name. ETA Form 9042A, Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, its Spanish translation, ETA Form 9042A, Solicitud De Asistencia Para Ajuste, and the On-Line Petition for Trade Adjustment Assistance, ETA Form 9042A–1 establish a format that may be used for filing such petitions.

Sections 222, 223 and 249 of the Trade Act of 1974, as amended, require the Secretary to issue a determination for groups of workers as to their eligibility to apply for TAA. After reviewing all of the information obtained for each petition for TAA filed with the Department, a determination is issued as to whether the statutory criteria for certification are met. The information collected in ETA Form 9043a, Business Data Request—Article, ETA Form 9043b, Business Data

Request—Service, ETA Form 9118, Business Information Request, ETA Form 8562a, Business Customer Survey, ETA form 85622a-1, Business Second Tier Customer Survey, ETA form 8562b, Business Bid Survey, will be used by the Secretary to determine to what extent, if any, increased imports or shifts in either service or production have impacted the petitioning worker group.

II. Review Focus

The Department 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

Type of Review: Extension with minor revisions.

Title: Investigative Data Collections for the Trade Act of 1974, as amended

OMB Number: 1205–0342

Affected Public: Individuals or Households, Businesses, State, Local or Tribal Governments.

Form(s):

- ETA 9042A, Petition for Trade Adjustment Assistance (1205–0342), its Spanish translation ETA 9042a (1205–0342), and its On-Line version ETA 9042A–1 (1205–0342);
- ETA 9043a, Business Data Request—Article (1205–0342);
- ETA 9043b, Business Data Request—Service (1205–0342);
- ETA 8562a, Business Customer Survey (1205–0342);
- ETA 85622a-1, Business Second Tier Customer Survey (1205–0342);
- ETA–8562b, Business Bid Survey (1205–0342); and
- ETA 9118, Business Information Request (1205–0342).

Total Annual Respondents: 6,756.

Annual Frequency: Once.

Total Annual Responses: 8,355.

Average Time per Response: 2.18 Hours.

Estimated Total Annual Burden Hours: 17,882.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Signed in Washington, DC, on this 29th day of August, 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–21867 Filed 9–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,263; TA–W–81,263A]

Chartis Global Services, Inc., a Subsidiary of Chartis, Inc., Regional Processing Organization, Regional Service Center, Houston, TX; Chartis Global Services, Inc., a Subsidiary of Chartis, Inc., Regional Processing Organization, Regional Service Center, Dallas, TX; 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 February 13, 2012, applicable to workers of Chartis Global Services, Inc., Regional Service Center, a subsidiary of Chartis, Inc., Houston, Texas. The Department's Notice of Determination was published in the **Federal Register** on February 28, 2012 (77 FR 13352). The subject workers are engaged in activities related to the supply of underwriting services. Specifically, these services include reservation, policy issuance, fulfillment, mid-term servicing and file management.

During the course of the investigation of another petition, the Department reviewed the certification applicable to workers and former workers of the subject firm. The review revealed that the Regional Service Center is part of the Regional Processing Organization and that workers and former workers at an affiliated facility in Dallas, Texas operated in conjunction with the Houston, Texas facility and were similarly affected by the workers' firm's shift to a foreign country the supply of services like or directly competitive with the insurance writing support services supplied by the Regional Service Center.

In order to properly identify the worker group and to capture the entirety of the affected worker group, the Department is amending the certification (TA–W–81,263) to add ''Regional Processing Organization'' and to add workers at an affiliated location in Dallas, Texas (TA–W–81,263A). The amended notice applicable to TA–W–81,263 is hereby issued as follows:

All workers of Chartis Global Services, Inc., a subsidiary of Chartis, Inc., Regional Processing Organization, Regional Service Center, Houston, Texas (TA–W–81,263) and Chartis Global Services., Inc, a subsidiary of Chartis, Inc, Regional Processing Organization, Regional Service Center, Dallas, Texas (TA–W–81,263A), who became totally or partially separated from employment on or after February 13, 2010 through February 13, 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 29th day of June, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–21870 Filed 9–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,655]

Carlyle Plastics and Resins, Formerly Known as Fortis Plastics, A Subsidiary of Plastics Acquisitions Inc., Including On-Site Leased Workers From Kelly Services and Shelley Investments D/B/A Salem Business Center, Carlyle, 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 July 3, 2012, applicable to workers and former workers of workers of Fortis Plastics, a subsidiary of Plastics Acquisitions Inc., Carlyle, Illinois. The Department's notice of determination was published in the **Federal Register** on Monday, July 23, 2012 (77 FR 43123).

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of custom injection molded plastic parts.

New information shows that Fortis Plastics is now called Carlyle Plastics and Resins. In addition, new information shows that the worker group includes on-site workers from Kelly Services, who were sufficiently under the operational control of Fortis Plastics to be considered leased workers.

The intent of the Department's certification is to identify the new subject firm name, as well as to include the on-site leased workers. Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–81,655 is hereby issued as follows:

All workers of Carlyle Plastics and Resins, formerly known as Fortis Plastics, a subsidiary of Plastics Acquisitions Inc., including on-site leased workers from Kelly Services and Shelley Investments d/b/a Salem Business Center, Carlyle, Illinois, who became totally or partially separated from employment on or after May 23, 2011 through July 3, 2014, and all workers in the group threatened with total or partial separation from employment on July 3, 2012 through July 3, 2014, 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 23rd day of August, 2012

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–21872 Filed 9–5–12; 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 August 20, 2012 through August 24, 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 number	Subject firm	Location	Impact date
81,595	Cartridge Source of America, Inc.	Merritt Island, FL	May 8, 2011
81,829	United Knitting LP, Mallen Industries, Inc., Omnisource Staffing, fka Employment Connection.	Cleveland, TN	July 25, 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 number	Subject firm	Location	Impact date
81,701	OnCore Manufacturing LLC, On-Site Leased Workers From Coworx Staffing, United Personnel & Robert Half.	Springfield, MA	June 8, 2011
81,822	Ross Mould LLC, UI Wages were Reported through Ross Mould, Inc..	Washington, PA	December 15, 2011
81,828	Atmel Corporation, San Jose Quality Assurance Organization.	San Jose, CA	July 24, 2011
81,858	Microsemi Corporation, RFIS Division	Folsom, CA	August 3, 2011
81,866	Actuant Electrical, Inc., aka Acme Electric, Actuant Corporation, Mega Force Staffing.	Lumberton, NC	September 28, 2012

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 number	Subject firm	Location	Impact date
81,779	Contech Castings, LLC, On-Site Leased Workers From Select Staffing.	Clarksville, TN	July 5, 2011

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 number	Subject firm	Location	Impact date
81,831	CDI Corporation, Division 01F1066, On-Site at Technicolor, Indianapolis, IN.	Virginia Beach, VA.	

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 number	Subject firm	Location	Impact date
81,886	Monroe Gray, dba Shirley Elaine	Cameron, LA.	

I hereby certify that the aforementioned determinations were issued during the period of August 20, 2012 through August 24, 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: August 29, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–21869 Filed 9–5–12; 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 September 17, 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 September 17, 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 29th day of August 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[15 TAA petitions instituted between 8/20/12 and 8/24/12]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
81905	Welded Tube (State/One-Stop)	Huger, SC	08/21/12	08/20/12
81906	Pratt & Whitney, Rocketdyne (State/One-Stop)	Canoga Park, CA	08/21/12	07/23/12
81907	Mohawk Industries (State/One-Stop)	Bennettsville, SC	08/21/12	08/20/12
81908	Rotek Incorporated (Company)	Aurora, OH	08/21/12	08/20/12
81909	Supervalu Holdings, Inc. (State/One-Stop)	Pleasant Prairie, WI	08/23/12	08/22/12
81910	IPS Worldwide LLC (State/One-Stop)	Cumberland, MD	08/23/12	08/22/12
81911	Exide Technologies (Workers)	Frisco, TX	08/23/12	08/22/12
81912	Fremont-Rideout Health Group (Workers)	Marysville, CA	08/23/12	08/18/12
81913	Millipore Corporation (Workers)	Phillipsburg, NJ	08/24/12	08/23/12
81914	Belden (Company)	Worcester, MA	08/24/12	08/23/12
81915	SuperValu (Workers)	Boise, ID	08/24/12	08/23/12
81916	Veolia Environmental Services (State/One-Stop)	Shreveport, LA	08/24/12	08/23/12
81917	Automotive Quality Associates (State/One-Stop)	Shreveport, LA	08/24/12	08/23/12
81918	Avnet, Inc. (Mariposa Industrial Park #1) (State/One-Stop)	Nogales, AZ	08/24/12	08/23/12
81919	Prometric (State/One-Stop)	Saint Paul, MN	08/24/12	08/23/12

[FR Doc. 2012–21868 Filed 9–5–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–067)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Counsel, Langley Research Center, Mail Stop 30, Hampton, VA 23681–2199; telephone (757) 864–3230; fax (757) 864–9190.

NASA Case No.: LAR–17485–2: Metal/Fiber Laminate and Fabrication Using a Porous Metal/Fiber Preform;

NASA Case No.: LAR–17791–1: Method for Producing Heavy Electrons:

NASA Case No.: LAR–17789–1: Electroactive Scaffold;

NASA Case No.: LAR–17799–1: Methods of Real Time Image Enhancement of Flash LIDAR Data and Navigating a Vehicle Using Flash LIDAR Data;

NASA Case No.: LAR–18023–1: Landing Gear Door Liners for Airframe Noise Reduction;
NASA Case No.: LAR–17555–1: Lock-In Imaging System for Detecting Disturbances in Fluid;
NASA Case No.: LAR–17318–1: Preparation of Metal Nanowire Decorated Carbon Allotropes;
NASA Case No.: LAR–17869–1: Team Electronic Gameplay Combining Different Means of Control;
NASA Case No.: LAR–18016–1: Wireless Temperature Sensor Having No Electrical Connections and Sensing Method for Use Therewith;
NASA Case No.: LAR–17681–1: Method and System for Repairing Cracks in Structures;
NASA Case No.: LAR–17919–1: Methods of Making Z-Shielding;
NASA Case No.: LAR–17735–1: Assessment and Calibration of a Crimp Tool Equipped with Ultrasonic Analysis Features;
NASA Case No.: LAR–17967–1: Multistage Force Amplification of Piezoelectric Stacks;
NASA Case No.: LAR–17455–2: A Nanotube Film Electrode and an Electroactive Device Fabricated with the Nanotube Film Electrode and Methods for Making Same;
NASA Case No.: LAR–17952–1: Multi-Point Interferometric Phase Change Detection Method;
NASA Case No.: LAR–17689–1: Negative Dielectric Constant Material Based on Ion Conducting Materials;
NASA Case No.: LAR–17857–1: In-Flight Pitot-Static Calibration;
NASA Case No.: LAR–17906–1: Abnormal Grain Growth Suppression in Aluminum Alloys;
NASA Case No.: LAR–17833–1: Active Aircraft Pylon Noise Control System;
NASA Case No.: LAR–17908–1: Photogrammetry System and Method for Determining Relative Motion Between Two Bodies;
NASA Case No.: LAR–17877–1: Autonomous Slat-Cove-Filler Device for Reduction of Aeroacoustic Noise Associated with Aircraft Systems;
NASA Case No.: LAR–17832–1: Aircraft Engine Exhaust Nozzle System for Jet Noise Reduction;
NASA Case No.: LAR–17985–1: An Acoustic Beam Forming Array Using Feedback-Controlled Microphones for Tuning and Self-Matching of Frequency Response;
NASA Case No.: LAR–17994–1: Method for Manufacturing a Thin Film Structural System;
NASA Case No.: LAR–17836–1: Sub-Surface Windscreen for Outdoor Measurement of Intrasound;
NASA Case No.: LAR–17894–1: A Method for Enhancing a Three Dimensional Image from a Pluralitry of Frames of Flash LIDAR Data;
NASA Case No.: LAR–17786–1: Smart Optical Material Characterization System and Method;
NASA Case No.: LAR–17958–1: Wireless Open-Circuit In-Plane Strain and Displacement Sensor Requiring No Electrical Connections;
NASA Case No.: LAR–18026–1: Anisotropic Copoly(imide Oxetane) Coatings and Articles of Manufacture, Copoly(imide Oxetane)s Containing Pendant Fluorocarbon Moieties, Oligomers and Processes Therefor;
NASA Case No.: LAR–17638–1: Antenna with Dielectric Having Geometric Patterns;
NASA Case No.: LAR–17987–1: Fault-Tolerant Self-Stabilizing Distributed Clock Synchronization Protocol for Arbitrary Digraphs;
NASA Case No.: LAR–17895–1: Physiologically Modulating Videogames or Simulations Which Use Motion-Sensing Input Devices;
NASA Case No.: LAR–17923–1: A Method of Creating Micro-Scale Silver Telluride Grains Covered with Bismuth Nanoparticles;
NASA Case No.: LAR–17888–1: Time Shifted PN Codes for CW LIDAR, RADAR, and SONAR;
NASA Case No.: LAR–17813–1: Systems, Apparatuses, and Methods for Using Durable Adhesively Bonded Joints for Sandwich Structures;
NASA Case No.: LAR–17769–1: Modification of Surface Energy via Direct Laser Ablative Surface Patterning;
NASA Case No.: LAR–17694–1: Fourier Transform Spectrometer System;
NASA Case No.: LAR–17831–1: Blended Cutout Flap for the Reduction of Jet-Flap Interaction Noise;
NASA Case No.: LAR–17386–1: Fine-Grained Targets for Laser Synthesis of Carbon Nanotubes;
NASA Case No.: LAR–17149–2: Mechanically Strong, Thermally Stable, and Electrically Conductive Nanocomposite Structure and Method of Fabricating Same;
NASA Case No.: LAR–17747–1: Wireless Temperature Sensing Having No Electrical Connections and Sensing Method for Use Therewith;
NASA Case No.: LAR–17993–1: Locomotion of Amorphous Surface Robots;
NASA Case No.: LAR–17886–1: Method and Apparatus to Detect Wire Pathologies Near Crimped Connector;
NASA Case No.: LAR–18006–1: Process and Apparatus for Nondestructive Evaluation of the Quality of a Crimped Wire Connector;
NASA Case No.: LAR–17332–2: Jet Engine Exhaust Nozzle Flow Effector;
NASA Case No.: LAR–17743–1: Stackable Form-Factor Peripheral Component Interconnect Device and Assembly;
NASA Case No.: LAR–17088–1: Nanotubular Toughening Inclusions;
NASA Case No.: LAR–16565–1: Electric Field Quantitative Measurement System and Method;
NASA Case No.: LAR–17959–1: Method of Making a Composite Panel Having Subsonic Transverse Wave Speed Characteristics;
NASA Case No.: LAR–18034–1: Compact Active Vibration Control System for a Flexible Panel;
NASA Case No.: LAR–17984–1: Elastically Deformable Side-Edge Link for Trailing-Edge Flap Aeroacoustic Noise Reduction;
NASA Case No.: LAR–18024–1: External Acoustic Liners for Multi-Functional Aircraft Noise Reduction;
NASA Case No.: LAR–17705–1: Compact Vibration Damper;
NASA Case No.: LAR–18021–1: Flap Side Edge Liners for Airframe Noise Reduction.

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–21911 Filed 9–5–12; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–062)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No.: ARC–16419–1: Stroboscopic Image Modulation to Reduce the Visual Blur of an Object Being Viewed by an Observer Experiencing Vibration;
NASA Case No.: ARC–16386–1: Visual Display and Comparison of Systems Operation in Different Modes;
NASA Case No.: ARC–16351–1: Movable Ground Based Recovery

System for Reusable Space Flight Hardware;
NASA Case No.: ARC–16692–1: Fiber-Reinforced Composite Materials;
NASA Case No.: ARC–14569–2: Spatial Standard Observer;
NASA Case No.: ARC–16348–1: Co-Optimization of Blunt Body Shapes for Moving Vehicles;
NASA Case No.: ARC–15204–1: Rapid Polymer Sequencer.

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–21912 Filed 9–5–12; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–063)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Kaprice L. Harris, Attorney Advisor, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–5754; fax (216) 433–6790.

NASA Case No.: LEW–18340–2: Offset Compound Gear Inline Two Speed Drive;
NASA Case No.: LEW–18313–2: Chalcogenide Nanoionic-Based Radio Frequency Switch;
NASA Case No.: LEW–18601–1: Inductive Power Device;
NASA Case No.: LEW–18566–1: Low Density, High Creep Resistant Single Crystal Superalloy with Lower Manufacturing Cost;
NASA Case No.: LEW–18362–2: Space Radiation Detector with Spherical Geometry;
NASA Case No.: LEW–18771–1: Integrated Temperature and Capacitive Ablation Recession Rate Sensors;
NASA Case No.: LEW–18473–1: Ka-Band Waveguide 2-Way Hybrid Combiner for MMIC Amplifiers with Unequal and Arbitrary Power Output Ratio;
NASA Case No.: LEW–18254–2: Simultaneous Non-Contact Precision Imaging of Microstructural and Thickness Variation in Dielectric Materials Using Terahertz Energy;
NASA Case No.: LEW–18724–1: Vessel Generation Analysis;
NASA Case No.: LEW–18639–1: Atomic Oxygen Fluence Monitor;
NASA Case No.: LEW–18042–2: Process for Preparing Polymer Reinforced Silica Aerogels;
NASA Case No.: LEW–18076–2: Dust Removal from Solar Cells;
NASA Case No.: LEW–18236–2: Polyimides Derived From Novel Asymmetric Benzophenone Dianhydrides;
NASA Case No.: LEW–17877–2: Antenna Near-Field Probe Station Scanner;
NASA Case No.: LEW–18631–1: Circuit for Communication Over Power Lines;
NASA Case No.: LEW–18608–1: Method for Making Fuel Cell;
NASA Case No.: LEW–18483–1: Interference-Free Optical Detection for Raman Spectroscopy;
NASA Case No.: LEW–18714–1: High Strength Nanocomposite Glass Fibers;
NASA Case No.: LEW–18605–1: Electric Propulsion Apparatus;
NASA Case No.: LEW–18762–1: Selenium Interlayer for High-efficiency Multijunction Solar Cell;
NASA Case No.: LEW–18426–1: Dual-Mode Combustor;
NASA Case No.: LEW–18615–1: Purify Nanomaterials;
NASA Case No.: LEW–18632–1: Method for Fabricating Diamond-Dispersed Fiber-Reinforced Composite Coating On Low Temperature Sliding Thrust Bearing Interfaces;
NASA Case No.: LEW–18492–1: Synthesis Methods, Microscopy Characterization and Device Integration of Nanoscale Metal Oxide Semiconductors for Gas Sensing in Aerospace Applications;
NASA Case No.: LEW–18636–1: N Channel JFET Based Digital Logic Gate Structure;
NASA Case No.: LEW–18634–1: Multi-Parameter Scattering Sensor and Methods;
NASA Case No.: LEW–18586–1: Shock Sensing Apparatus;
NASA Case No.: LEW–18221–2: Method and Apparatus for Thermal Spraying of Metal Coatings Using Pulsejet Resonant Pulsed Combustion;
NASA Case No.: LEW–18619–1: Method to Transmit and Receive Video on Preexisting Wiring in Fixed and Mobile Structures;
NASA Case No.: LEW–17458–2: Compact Solid State Entangled Photon Source;
NASA Case No.: LEW–17634–2: Method for Making a Fuel Cell;
NASA Case No.: LEW–18649–1: Ultracapacitor Based Uninterruptible Power Supply (UPS) System;
NASA Case No.: LEW–18648–1: Epoxy-clay Nanocomposites;
NASA Case No.: LEW–18594–1: Thermomechanical Methodology for Stabilizing Shape Memory Alloy (SMA) Response;
NASA Case No.: LEW–18717–1: A High-Efficiency Power Module;
NASA Case No.: LEW–18785–1: Prestressing Shock Resistant Mechanical Components and Mechanisms Made From Hard, Superelastic Materials;
NASA Case No.: LEW–18432–2: Method for Providing Semiconductors Having Self-Aligned Ion Implant;
NASA Case No.: LEW–18604–1: Mechanical Components From Highly Recoverable Low Apparent Modulus Materials;
NASA Case No.: LEW–18614–1: High-Temperature Thermometer Using Cr-Doped $GdAlO_3$ Broadband Luminescence;
NASA Case No.: LEW–18761–1: Surface Temperature Measurement Using Hematite Coating;
NASA Case No.: LEW–18296–1: Modular Battery Controller;
NASA Case No.: LEW–18658–1: Levitating Electromagnetic Generator and Method of Using the Same;
NASA Case No.: LEW–18248–1: Cellular Reflectarray Antenna and Method of Making Same;
NASA Case No.: LEW–17916–2: Carbon Dioxide Gas Sensors and Method of Manufacturing and Using Same;
NASA Case No.: LEW–18542–1: Functionalization of Single Wall Carbon Nanotubes (SWCNTs) by Photooxidation;
NASA Case No.: 18477–1: Graphene Based Reversible Nano-Switch/Sensor Schottky Diode (nanoSSSD) Device.

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–21913 Filed 9–5–12; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–065)]

Government-Owned Inventions, Available for Licensing.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the

National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No.: DRC–009–026: Systems and Methods for Peak-Seeking Control Polarization-Induced Fading in Fiber-Optic System;
NASA Case No.: NPO–47142–1: Robotic Tissue Scaffold;
NASA Case No.: NPO–47717–1: 360-Degree Camera Head for Unmanned Surface Sea Vehicles;
NASA Case No. NPO–47300–1: Textured Silicon Substrate Anode for LI Ion Battery;
NASA Case No. NPO–47604–1: Whispering Gallery Optical Resonator Spectroscopic Probe and Method;
NASA Case No. NPO–47580–1: Energy Harvesting Systems and Methods of Assembling Same;
NASA Case No. NPO–47310–1: Method and Apparatus for Measuring Near-Angle Scattering of Mirror Coatings;
NASA Case No. NPO–47869–1: Field Programmable Gate Array Apparatus, Method, and Computer Program.

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–21915 Filed 9–5–12; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–064)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No.: GSC–15994–1: Photonic Choke-Joints for Dual-Polarization Waveguides;
NASA Case No.: GSC–15774–1: A Device and Method for Gathering Ensemble Data Sets;
NASA Case No.: GSC–15957–1: METHOD AND APPARATUS FOR IMAGE PLANE EXIT PUPIL CHARACTERIZATION;
NASA Case No.: GSC–15977–1: SYSTEM AND METHOD FOR PHASE RETRIEVAL FOR RADIO TELESCOPE AND ANTENNA CONTROL;
NASA Case No.: GSC–15964–1: WIND ION NEUTRAL COMPOSITION APPARATUS;
NASA Case No.: GSC–16250–1: SYSTEM AND METHOD FOR IMPROVED COMPUTATIONAL PROCESSING EFFICIENCY IN THE HSEG ALGORITHM;
NASA Case No.: GSC–15692–1: EXPANDABLE AND RECONFIGURABLE INSTRUMENT NODE ARRAYS;
NASA Case No.: GSC–15727–1: SOLDERLESS CIRCULARLY POLARIZED MICROWAVE ANTENNA ELEMENT;
NASA Case No.: GSC–14873–1: ADR SALT PILL DESIGN AND CRYSTAL GROWTH PROCESS FOR HYDRATED MAGNETIC SALTS;
NASA Case No.: GSC–15660–1: SYSTEM, TOOL AND METHOD FOR INTEGRATED CIRCUIT AND COMPONENT MODELING;
NASA Case No.: GSC–15934–1: SYSTEM AND METHOD FOR DETERMINING PHASE RETRIEVAL SAMPLING FROM THE MODULATION TRANSFER FUNCTION;
NASA Case No.: GSC–16109–1: WRENCH WITH EXPANDING TIP ASSEMBLY;
NASA Case No.: GSC–15815–1: LIDAR Luminance Quantizer;
NASA Case No.: GSC–16105–1: Molecular Adsorber Coating;
NASA Case No.: GSC–15976–1: Phase Retrieval System for Assessing Diamond-Turning and Other Optical Surface Artifacts;
NASA Case No.: GSC–15935–1: Discrete Fourier Transform in a Complex Vector Space;
NASA Case No.: GSC–15782–1: Low Power, Multi-Channel Pulse Data Collection System and Apparatus;
NASA Case No.: GSC–15947–1: Method for Utilizing Properties of the SINC(X) Function for Phase Retrieval on NYQUIST-Under-Sampled Data;
NASA Case No.: GSC–16100–1: System and Method for Command and Data Handling in Space Flight Electronics;
NASA Case No.: GSC–15936–1: Radiation-Hardened Hybrid Processor;
NASA Case No.: GSC–15953–1: Radiation-Hardened Processing System;
NASA Case No.: GSC–15979–1: System and Method for Multi-Scale Image Reconstruction Using Wavelets;
NASA Case No.: GSC–15839–1: Widely Tunable Optical Parametric Generator Having Narrow Bandwidth Field;
NASA Case No.: GSC–15911–1: Graphite Composite Panel Polishing Fixture and Assembly;
NASA Case No.: GSC–15951–1: Method of Making Lightweight, Single Crystal Mirror;
NASA Case No.: GSC–16029–1: System and Method for Nanostructure Apodization Mask for Transmitter Signal Suppression in a Duplex Telescope;
NASA Case No.: GSC–15826–1: Ion Source with Corner Cathode;
NASA Case No.: GSC–16016–1: System and Method for Growth of Enhanced Adhesion Carbon Nanotubes on Substrates;
NASA Case No.: GSC–15886–1: Low Power, Automated Weight Logger;
NASA Case No.: GSC–15520–1: Imaging Device;
NASA Case No.: GSC–15970–1: Electrospray Ionization for Chemical Analysis of Organic Modules for Mass Spectrometry;
NASA Case No.: GSC–15672–1: An Apparatus for Ultrasensitive Long-Wave Imaging Cameras;
NASA Case No.: GSC–16024–1: System and Method for Improved Computational Processing Efficiency in the HSEG Algorithm;
NASA Case No.: GSC–15792–1: Systems and Method for Progressive Band Selection for Hyperspectral Images;
NASA Case No.: GSC–15948–1: Suspension Device for Use with Low Temperature Refrigerator;
NASA Case No.: GSC–16096–1: A Genomics-Based Keyed Hash Message Authentication Code Protocol;
NASA Case No.: GSC–16006–1: System and Apparatus Employing Programmable Transceivers;
NASA Case No.: GSC–15163–2: Detector for Dual Band Ultraviolet Detection.

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–21914 Filed 9–5–12; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–54; Order No. 1454]

International Mail Postal Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service filing addressing a new International Business Reply Service Contract 3. It seeks inclusion of the new contract within an existing product grouping. This notice addresses provides public notice of the filing and of related procedural steps.

DATES: *Comments are due:* September 7, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Postal Service Notice
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

The Commission hereby informs the public that the Postal Service has filed a notice stating that it (1) has entered into a new contract and (2) asks the Commission to include the new contract within the International Business Reply Service (IBRS) Competitive Contract 3 grouping.[1] The Postal Service's Notice was filed pursuant to 39 CFR 3015.5.

II. Postal Service Notice

Scope of Notice. The Notice provides a general description of the IBRS product and reviews its regulatory history.[2] Notice at 1–3. The new agreement is a successor to an existing contract with the same Canadian customer. *Id.* at 3; *see* Docket No. CP2011–70. It also identifies several differences between the new contract and the IBRS 3 baseline contract, but maintains the differences are minor and do not affect the fundamental service the Postal Service is offering or the fundamental structure of the contract.[3] *Id.* at 5–6.

Key dates. The Postal Service states that the existing contract expires September 14, 2012, and that it intends the new contract to take effect 1 day later, on September 15, 2012, for a period of 1 year, unless terminated earlier. *Id.* at 3.

Documentation. Attachments to the Notice provide redacted versions of the new contract; a certification addressing the consistency of costs and prices with applicable statutory criteria; and the original Governors' Decision No. 08–24 addressing IBRS contracts and related material. *Id.* Attachments 1 through 3, respectively. Attachment 4 is an application for non-public treatment of unredacted versions of the material in Attachments 1 through 3.

Postal Service representations. The Postal Service asserts that the instant contract is in compliance with 39 U.S.C. 3633; is functionally equivalent to other IBRS agreements; and fits within the Mail Classification Schedule language for IBRS contracts. Notice at 5–6. Accordingly, it asserts that the contract should be included within IBRS Competitive Contracts 3 (MC2011–21). *Id.* at 6.

III. Commission Action

The Commission establishes Docket No. CP2012–54 for consideration of matters raised in the instant Notice. James F. Callow is appointed to serve as an officer of the Commission (Public Representative).

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than August 21, 2012. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov).*

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012–54 for consideration of the matters raised in the Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Settlement Agreement, filed August 29, 2012.

2. Pursuant to 39 U.S.C. 505, the Commission appoints James F. Callow to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

3. Comments are due no later than September 7, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–21897 Filed 9–5–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Settlement Agreement, August 29, 2012 (Notice).

[2] The Postal Service states that IBRS competitive contracts are for customers that sell lightweight articles to foreign consumers and want to offer those consumers a method of returning the articles to the United States for recycling, refurbishment, repair, or value-added processing. Notice at 5.

[3] The IBRS 3 baseline contract was approved in Docket Nos. MC2011–21 and CP2011–59.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 14D–1F; OMB Control No. 3235–0376; SEC File No. 270–338.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14D–1F (17 CFR 240.14d-102) is a form that may be used by any person making a cash tender or exchange offer (the ''bidder'') for securities of any issuer, incorporated or organized under the laws of Canada or any Canadian province or territory, that is a foreign private issuer and less than 40% of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in securities of Canadian issuers. The information required to be filed with the Commission provides security holders with material information regarding the bidder as well as the transaction so that they may make informed investment decisions. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by approximately 5 respondents annually for a total reporting burden of 10 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21907 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form T–2; OMB Control No. 3235–0111; SEC File No. 270–122.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–2 (17 CFR 269.2) is a statement of eligibility of an individual trustee under the Trust Indenture Act of 1939. The information is used to determine whether the individual is qualified to serve as a trustee under the indenture. Form T–2 takes approximately 9 hours per response to prepare and is filed by 36 respondents. We estimate that 25% of the 9 burden hours (2 hours per responses) is prepared by the filer for a total reporting burden of 72 hours (2 hours per response x 36 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21904 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form T–3; OMB Control No. 3235–0105; SEC File No. 270–123.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided under Form T–3 is used by the Commission to determine whether to qualify an indenture relating to an offering of debt securities that is not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 takes approximately 43 hours per response to prepare and is filed by 78 respondents. We estimate that 25% of the 43 burden hours (11 hours per response) is prepared by the filer for a total reporting burden of 858 hours (11 hours per response x 78 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21905 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor and Advocacy, Washington, DC 20549–0213.

Extension:

Form T–4; OMB Control No. 3235–0107 ; SEC File No. 270–124.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–4 (17 CFR 269.4) is a form used by an issuer to apply for an

exemption under Section 304(c) (15 U.S.C. 77ddd (c)) of the Trust Indenture Act of 1939 (77 U.S.C. 77aaa *et seq.*). Form T–4 takes approximately 5 hours per response to prepare and is filed by 3 respondents. We estimate that 25% of the 5 burden hours (1 hour per response) is prepared by the filer for a total reporting burden of 3 hours (1 hour per response x 3 responses). The remaining 75% of the burden hours is attributed to outside cost.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21906 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form T–1; OMB Control No. 3235–0110; SEC File No. 270–121.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee under an indenture. The information is used to determine whether the corporation is qualified to serve as a trustee. Form T–1 takes approximately 15 hours per response to prepare and is filed by approximately 13 respondents. We estimate that 25% of the 15 hours (4 hours per response) is prepared by the company for a total reporting burden of 52 hours (4 hours per response × 13 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21903 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67759; File No. SR–NYSE–2012–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 107B To Change the Existing Supplemental Liquidity Provider Monthly Volume Requirement in All Assigned SLP Securities and Amend the Exchange's Price List To Specify the Applicable Percentage of NYSE CADV for the Monthly Volume Requirement

August 30, 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 August 28, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) amend Rule 107B to change the existing Supplemental Liquidity Provider (''SLP'') monthly volume requirement in all assigned SLP securities (''monthly volume requirement'') from an average daily volume (''ADV'') of more than 10 million shares to an ADV that is a specified percentage of consolidated ADV (''CADV'') in all NYSE-listed securities (''NYSE CADV'') and (ii) amend the Exchange's Price List to specify the applicable percentage of NYSE CADV for the monthly volume requirement. The Exchange is proposing that these changes become operative on September 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is proposing to (i) amend Rule 107B [3] to change the existing SLP monthly volume requirement from an ADV of more than 10 million shares to an ADV that is a specified percentage of NYSE CADV and (ii) amend the Exchange's Price List to specify the applicable percentage of NYSE CADV for the monthly volume requirement. The Exchange is proposing that these changes become operative on September 1, 2012.

An SLP is a member organization that electronically enters orders or quotes from off the Floor of the Exchange into the systems and facilities of the Exchange and is obligated to maintain a bid or an offer at the National Best Bid (''NBB'') or the National Best Offer (''NBO'') in each assigned security in round lots averaging at least 10% of the trading day (the ''percentage quoting requirement''). In addition, for all assigned SLP securities, an SLP is required to satisfy a monthly volume requirement by adding liquidity of an ADV of more than 10 million shares on a monthly basis.[4] An SLP can either be a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM'').

An SLP that fails to satisfy the applicable percentage quoting requirement provided in Rule 107B(a) would be subject to certain non-regulatory penalties imposed by the Exchange, including, for example, having its SLP status revoked.[5] However, an SLP that fails to satisfy the monthly volume requirement would not be subject to a non-regulatory penalty, but instead could fail to qualify for the credits available to SLPs. Because, unlike the applicable percentage quoting requirement, the monthly volume requirement only has an impact with respect to the credits available to SLPs, the Exchange believes that it is more appropriate to include the applicable monthly volume requirement in the Price List, rather than in Rule 107B.

The Exchange therefore proposes to amend Rule 107B(a) to change the current monthly volume requirement of adding liquidity of an ADV of more than 10 million ADV shares in all assigned SLP securities to specify instead that the monthly volume requirement would be based on a specified percentage of NYSE CADV. The Exchange believes that a monthly volume requirement based on a percentage of NYSE CADV, rather than a fixed volume requirement, is more appropriate because it would reasonably assure that the monthly volume requirement is consistent relative to fluctuations in market volume over time. In particular, in August 2010, when the Exchange adopted the current monthly volume requirement,[6] NYSE CADV was 4.039 billion shares. In contrast, NYSE CADV for July 2012 was 3.484 billion shares.

Accordingly, the Exchange proposes to change references in Rule 107B, generally, from ''10 million shares'' to ''a specified percentage of CADV in all NYSE-listed securities, as set forth in the Exchange's Price List.'' The Exchange also proposes to amend the Price List to specify that the applicable percentage of NYSE CADV will be 0.22%. In this regard, the following three credit rates would apply to SLPs: [7]

1. [sic] $0.0015 per share (or $0.0010 per share if a Non-Displayed Reserve Order) when adding liquidity to the Exchange in securities with a per share price of $1.00 or more, if the SLP does not qualify for the higher credit set forth in paragraph 2, below.

2. [sic] $0.0021 per share (or $0.0016 per share if a Non-Displayed Reserve Order) when adding liquidity to the Exchange in securities with a per share price of $1.00 or more if the SLP (i) meets the 10% average or more quoting requirement in the assigned security pursuant to Rule 107B [8] and (ii) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.22% of NYSE CADV.[9]

3. [sic] $0.005 per share when adding liquidity to the Exchange in securities with a per share price of less than $1.00 if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B and (ii) adds liquidity of an ADV of more than 0.22% of NYSE CADV for all assigned SLP securities in the aggregate.

Finally, the Exchange proposes to amend the description of the method of calculation of the monthly volume requirement in Rule 107B(h) in order to reflect the use of a specified percentage of NYSE CADV. Specifically, it will provide that to calculate the ADV, the aggregated liquidity an SLP provides in all of its assigned SLP securities each month should be divided by the number of trading days in the applicable month, and then the ADV figure should be divided by the NYSE CADV during the month.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed change promotes just and equitable principles of trade because, by basing the monthly volume requirement on a percentage of NYSE CADV, the SLP requirement to add liquidity to the market would track actual consolidated trading volumes. Accordingly, in months with lower trading volumes, a monthly volume

[3] Rule 107B operates pursuant to a pilot program that is in effect until January 31, 2013. *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108). *See also* Securities Exchange Act Release No. 67493 (July 25, 2012), 77 FR 45388 (July 31, 2012) (SR–NYSE–2012–27).

[4] *See* Rule 107B(a).

[5] *See* Rule 107B(k).

[6] *See* Securities Exchange Act Release No. 62791 (August 30, 2010), 75 FR 54411 (September 7, 2010) (SR–NYSE–2010–60).

[7] The Exchange notes that the only aspect of the SLP credits in the Price List that would change is replacing the 10 million share ADV reference with the 0.22% of NYSE CADV reference (*e.g.,* the credit rates would remain the same as they currently are). SLP execution of securities with a per share price of $1.00 or more at the close would continue to be free.

[8] As is currently the case, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated for purposes of this calculation.

[9] As is currently the case, this calculation includes shares of both an SLP-Prop and an SLMM of the same member organization.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

requirement that tracks the actual consolidated volume would reasonably assure that SLPs add sufficient liquidity relative to the market, without the monthly volume requirement being too burdensome for SLPs. Conversely, during months when trading volumes are generally higher across all markets, the proposed change would result in SLPs being required to increase the liquidity they add to the market, thereby reasonably assuring that SLPs are engaging in trading activity that is meaningful and consistent with the purpose of the SLP credits.

Similarly, the Exchange believes that the proposed change will protect investors and the public interest because it will result in the level of trading activity that is required of SLPs in order to qualify for the increased credit being at a level that is reflective of trading activity across the markets at any given point in time, as opposed to the current monthly volume requirement that is a fixed number of shares and therefore does not account for fluctuations in market volume over the course of different months. Finally, the Exchange believes that the proposed change does not permit unfair discrimination among customers, issuers, brokers or dealers because it would apply to all member organizations that operate as an SLP. In this regard, SLPs are required to satisfy certain quoting requirements that contribute to the quality of the Exchange's market throughout the trading day, which other member organizations are not required to satisfy.

Additionally, the Exchange believes that the proposed change will remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because by relocating the specified percentage of NYSE CADV to the Price List, member organizations will only need to go to a single source to identify both what the credit would be, and the monthly volume requirement for such credit.

The Exchange further believes that the proposed change is consistent with, and furthers the objectives of, Section 6(b)(4) of the Act [12] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Specifically, the Exchange believes that the proposed change is reasonable, because the proposed monthly volume requirement of 0.22% of NYSE CADV is consistent with a level of activity on the Exchange that is believed to be commensurate with the existing monthly volume requirement of 10 million shares, as was contemplated when the current monthly volume requirement was added in August 2010. The Exchange further believes that the proposed change is reasonable because it would continue to encourage SLPs to send additional orders to the Exchange for execution in order to qualify for an incrementally higher credit for such executions that add liquidity on the Exchange. In this regard, the Exchange believes the proposed change may incentivize SLPs to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery, promotes market transparency and is reasonably related to an exchange's market quality that is associated with higher volumes. Finally, the Exchange believes that the proposed change is reasonable because it would include the actual monthly volume requirement details within the Price List, where the monthly volume requirement actually has a direct impact (*i.e.,* qualifying for the increased credit is determined by whether the SLP satisfies the monthly volume requirement), as opposed to Rule 107B, where the monthly volume requirement does not have a direct impact (*i.e.,* the non-regulatory penalties are not determined by the SLP's activity across all assigned securities).

The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it would apply equally and uniformly to all member organizations that operate as SLPs. Moreover, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because a monthly volume requirement that is a percentage of NYSE CADV is fluid, and can therefore account for increases or decreases in overall trading activity across all markets, whereas the existing fixed monthly volume requirement is static. In this regard, the Exchange notes that a fixed monthly volume requirement, like the one that is currently in place, may become easier to achieve during more active trading months and, conversely, may become more difficult to reach during less active trading months. Accordingly, the proposed change may enable more SLPs to qualify for the increased credit in the Price List during months when overall activity across all markets is lower than normal. Similarly, during months when trading activity is higher, and the monthly volume requirement is therefore more difficult to reach, the proposed change would result in SLPs continuing to be required to engage in meaningful activity to qualify for the credit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The proposal will take overall liquidity trends into account when determining monthly volume requirements applicable to SLPs by shifting to a percentage based on NYSE CADV. The Exchange has represented that SLPs are currently being held to a higher relative volume requirement than was intended when the Exchange adopted the 10 million fixed monthly volume requirement in 2010. Waiving the operative delay will allow this proposal, which the Exchange believes imposes a more appropriate volume requirement for SLPs, to become effective immediately and operative on September 1, 2012. Therefore, the

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission designates the proposal operative on September 1, 2012.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2012–38 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–2012–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–38 and should be submitted on or before September 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21901 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67760; File Nos. SR–BSECC–2012–01; SR–BX–2012–052; SR–NASDAQ–2012–072; SR-Phlx-2012–95; SR–SCCP–2012–01]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Changes With Respect to the Amendment of the By-Laws of The NASDAQ OMX Group, Inc.

August 30, 2012.

I. Introduction

On June 20, 2012, the NASDAQ Stock Market LLC (''NASDAQ''), and on July 11, 2012, Boston Stock Exchange Clearing Corporation (''BSECC''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX LLC (''Phlx''), and the Stock Clearing Corporation of Philadelphia (''SCCP'' and, with BSECC, BX, NASDAQ, and Phlx, the ''SROs''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3]proposed rule changes with respect to the amendment of the by-laws (the ''NASDAQ OMX By-Laws'') of The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), the parent company of the SROs. The proposed rule changes were published for comment in the **Federal Register** on July 5, 2012, July 19, 2012, and July 27, 2012.[4] The Commission received no comment letters on the proposals.

II. Background

NASDAQ OMX is proposing to amend provisions of the NASDAQ OMX By-Laws pertaining to the composition of the Management Compensation Committee of the NASDAQ OMX Board of Directors. Specifically, NASDAQ OMX proposes to amend the compositional requirements of its Management Compensation Committee as set forth in Section 4.13 of the NASDAQ OMX By-Laws to replace a requirement that the committee be composed of a majority of Non-Industry Directors[5] with a requirement that the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 67293 (June 28, 2012), 77 FR 39751 (July 5, 2012) (SR–NASDAQ–2012–072) (the ''NASDAQ Notice''); 67433 (July 13, 2012), 77 FR 42522 (July 19, 2012) (SR–BX–2012–052); 67434 (July 13, 2012), 77 FR 42524 (July 19, 2012) (SR–Phlx–2012–95); 67487 (July 23, 2012), 77 FR 44301 (July 27, 2012) (SR–BSECC–2012–001); 67486 (July 23, 2012), 77 FR 44299 (July 27, 2012) (SR–SCCP–2012–01).

[5] Article I(j) of the NASDAQ OMX By-Laws defines an ''Industry Director'', in part, as a Director (excluding any two officers of NASDAQ OMX, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the ''Staff Directors'')) who (1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to NASDAQ OMX or any affiliate thereof or to the Financial Industry Regulatory Authority (''FINRA'') or has had any such relationship or provided any such services at any time within the prior three years.

Article I(m) of the NASDAQ OMX By-Laws defines a ''Non-Industry Director'', in part, as a Director (excluding the Staff Directors) who is (1) a Public Director; (2) an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any SRO; or (3) any other individual who would not be an Industry Director.

Article I(n) of the NASDAQ OMX By-Laws defines a ''Public Director'', in part, as a Director who has no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA.

number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the NASDAQ OMX By-Laws with respect to the Executive Committee and the Nominating and Governance Committee, as well as the full Board of Directors.

According to the SROs, the proposed changes will provide NASDAQ OMX with a greater flexibility with regard to populating a committee that includes directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that directors associated with Exchange members and other broker-dealers do not exert disproportionate influence of the governance of NASDAQ OMX.[6]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange or a registered clearing agency.[7] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,[8] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. The Commission also finds that the proposed rule changes are consistent with Section 17A of the Act[9] because the proposed rule changes will help ensure that BSECC and SCCP are so organized and have the capacity to comply with the provisions of the Act and the rules and regulations thereunder.

The proposed changes to the composition requirement of NASDAQ OMX's Management Compensation Committee are identical to the composition requirements currently in effect for the Executive Committee, Nominating and Governance Committee, and full Board of Directors of NASDAQ OMX.[10] Furthermore, the NASDAQ OMX Management Compensation Committee is required to be comprised of Independent Directors (as defined in NASDAQ's rules).[11]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and a registered clearing agency.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[12] that the proposed rule changes (SR–BSECC–2012–001; SR–BX–2012–052; SR–NASDAQ–2012–072; SR–Phlx–2012–95; and SR–SCCP–2012–01), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–21902 Filed 9–5–12; 8:45 am]

BILLING CODE 8011–01–P

[6] *See, e.g.,* NASDAQ Notice, 77 FR at 39752.

[7] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78q–1.

[10] *See* Sections 4.3, 4.13(d) and 4.13(h)(1) of NASDAQ OMX By-Laws.

[11] *See* NASDAQ Rule 5605(d). Rule 5605(d) provides that the compensation committees of NASDAQ-listed companies must be comprised solely of Independent Directors. NASDAQ OMX is a NASDAQ-listed company.

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012–0016]

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration (SSA)/ Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA))—Match Number 1309

AGENCY: SSA.

ACTION: Notice of a renewal of an existing computer matching program that will expire on October 1, 2012.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with VA/VBA.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and by adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dawn S. Wiggins,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA with the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA).

A. Participating Agencies

SSA and VA/VBA.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions under which VA will disclose VA compensation and pension payment data to us. This disclosure will provide us with information necessary to verify an individual's self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable us to identify individuals who may qualify for Extra Help.

C. Authority for Conducting the Matching Program

The legal authority for VA to disclose information under this agreement is 42 U.S.C. 1383(f) of the Social Security Act (Act). The legal authority for us to conduct this computer matching program is 1860D–14(a)(3) (42 U.S.C. 1395w–114), and 1144(a)(1) and (b)(1) (42 U.S.C. 1320b–14) of the Act.

D. Categories of Records and Persons Covered by the Matching Program

1. Systems of Records

VA will provide us with electronic files containing compensation and pension payment data from its system of records (SOR) entitled ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA'' (58VA21/22/28), published at 74 FR 29275 (last amended April 27, 2010). Routine use 20 for VA permits the disclosure of this information.

We will match the VA data with data in our Medicare Database (MDB), SOR 60–0321, last published at 71 FR 42159 (July 25, 2006).

2. Number of Records

VA's data file will consist of approximately 4.9 million electronic records and VA will transmit it monthly. Our comparison file contains approximately 65 million records obtained from the MDB. The number of people who apply for Extra Help determines in part the number of records matched.

3. Specified Data Elements

We will conduct the match using the Social Security number, name, date of birth, and VA claim number on both the VA file and the MDB.

4. Frequency of Matching

VA will furnish us with an electronic file containing VA compensation and pension payment data monthly. The actual matching will take place approximately during the first week of every month.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is October 2, 2012, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2012–21929 Filed 9–5–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8015]

Designation of the Communist Party of Nepal (Maoist) as a Specially Designated Global Terrorist; In the Matter of the Designation of The Communist Party of Nepal (Maoist) Also Known as United Revolutionary People's Council Also Known as People's Liberation Army of Nepal Also Known as CPN(M) as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of Section 1(b) of Executive Order 13224 of September 23, 2001, as amended (''the Order''), I hereby revoke the designation of the entity known as the Communist Party of Nepal (Maoist), also known as United Revolutionary People's Council, also known as People's Liberation Army of Nepal, also known as CPN(M), as a Specially Designated Global Terrorist pursuant to Section 1(b) of the Order.

This notice shall be published in the **Federal Register**.

Dated: August 28, 2012.

Wendy R. Sherman,

Under Secretary of State for Political Affairs.

[FR Doc. 2012–21970 Filed 9–5–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8016]

In the Matter of the Designation of The Communist Party of Nepal (Maoist) Also Known as United Revolutionary People's Council Also Known as People's Liberation Army of Nepal Also Known as CPN(M) Pursuant to Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (INA), as Amended

Acting under the authority of Section 212(a)(3)(B)(vi)(II) of the INA, I hereby revoke the designation of the Communist Party of Nepal (Maoist), also known as United Revolutionary People's Council, also known as People's Liberation Army of Nepal, also known as CPN(M), as a ''terrorist organization'' under Section 212(a)(3)(B)(vi)(II) of the INA.

This notice shall be published in the **Federal Register.**

Dated: August 28, 2012.

Wendy R. Sherman,

Under Secretary of State for Political Affairs.

[FR Doc. 2012–21975 Filed 9–5–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 18, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0138.

Date Filed: August 13, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 4, 2012.

Description: Application of KaiserAir, Inc. (''KaiserAir'') requesting an amended certificate of public convenience and necessity authorizing it to conduct foreign charter air transportation of persons, property and mail. KaiserAir also requests an exemption to conduct such service while this application is pending.

Docket Number: DOT–OST–2012–0144.

Date Filed: August 17, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 7, 2012.

Description: Application of Air One Executive S.p.A. requesting exemption authority and a foreign air carrier permit authority to engage in the following operations using small aircraft: (a) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Community via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any Member State of the European Common Aviation Area; (c) foreign charter cargo air transportation between any point or points in the United States and any other point or points; and (d) charter transportation consistent with any future, additional rights that may be granted to foreign air carriers of the Member States of the European Community.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–21954 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 11, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0133.

Date Filed: August 7, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 2012.

Description: Application of Air Transport International (''ATI'') Limited Liability Company requesting the Department disclaim jurisdiction over the transfer of its certificates of public convenience and necessity to facilitate the reorganization of ATI from a Nevada limited liability company to a Delaware corporation, to be named Air Transport International, Inc.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–21956 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Change in Use of Aeronautical Property at Louisville International Airport, Louisville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on request by the Louisville Regional Airport Authority to change a portion of airport property from aeronautical to non-aeronautical use at the Louisville International Airport, Louisville, Kentucky. The request consists approximately of 1.27 acres of fee simple release. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before *October 9, 2012.*

ADDRESSES: Documents are available for review at the Louisville Regional Airport Authority, 700 Administration Drive, Louisville, KY 40209 and the FAA Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles T. Miller, Executive Director, Louisville Regional Airport Authority, P.O. Box 9129, Louisville, KY 40209.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy L. Dupree, Team Lead/Civil Engineer, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Louisville International Airport, Louisville, KY 42103. Under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On August 23, 2012, the FAA determined that the request to release property at Louisville International Airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than *October 9, 2012.*

The following is a brief overview of the request:

The Louisville Regional Airport Authority is proposing the release of approximately 1.27 acres, which include small portions of 28 various parcels located west of Louisville International Airport, bordered on the south by Woodlawn Avenue, bordered on the west by Louisville Avenue, bordered on the north by Dakota and Horn Avenue, and bordered on the east by Crittenden Drive. This release is for the swapping of like value property to the Commonwealth of Kentucky and the Louisville Metropolitan Government for the relocation of future Crittenden Drive.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in Memphis, TN on August 23, 2012.

Tommy L. Dupree,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2012–21540 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 3 p.m. to 4:30 p.m. (EDT) on Tuesday, October 23, 2012 at the SLSDC's Policy Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Acting Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, October 19, 2012, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, Suite W32–300, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 31, 2012.

Craig H. Middlebrook,

Acting Administrator.

[FR Doc. 2012–21918 Filed 9–5–12; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Individuals Pursuant to Executive Order 13581

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury 's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals whose property and interests in property have been blocked pursuant to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations'' (''the Order'').

DATES: The designation by the Director of OFAC of the five individuals identified in this notice pursuant to Executive Order 13581 is effective on June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. 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 on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

On July 24, 2011, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued the Order. In the Order, the President declared a national emergency to deal with the threat posed by significant transnational criminal organizations and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, that constitutes a significant transnational criminal organization, or materially to assist in, or provide financial or technological support for or goods or services in support of, persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On June 6, 2012, the Director of OFAC, in consultation with the Departments of Justice, and State, designated 5 individuals, whose property and interests in property are blocked pursuant to the Order.

The list of designees is as follows:

Individuals

1. MIRZOYEV, Temuri Suleimanovich (a.k.a. MIRZOEV, Temuri; a.k.a. ''TIMUR SVERDLOVSKIY''; a.k.a. ''TIMUR TBILISI''; a.k.a. ''TIMUR TBILISSKIY''), DOB 7 May 1957; POB Tbilisi, Georgia (individual) [TCO].

2. SHEMAZASHVILI, Koba Shalvovich (a.k.a. SHERMAZASHVILI, Koba; a.k.a. ''KOBA RUSTAVSKIY''; a.k.a. ''TSITSILA''), DOB 1974; POB Rustavi, Georgia (individual) [TCO].

3. SHUSHANASHVILI, Kakhaber Pavlovich (a.k.a. KOSTOV, Nikolay Lyudmilo; a.k.a. ROSTOV, Nicholas; a.k.a. SEPIASHVILI, Moshe Israel; a.k.a. SHUSHANASHVILI, Kajaver; a.k.a. SHUSHANASHVILI Kakha; a.k.a. ''KAKHA RUSTAVSKIY''), 8 Rukavishnikov Street, Mariinskiy Posad, Chuvash Republic, Russia; DOB 8 Feb 1972; POB Rustavi, Georgia; alt. POB Kutaisi, Georgia; nationality Georgia (individual) [TCO].

4. SHUSHANASHVILI, Lasha Pavlovich (a.k.a. MALGASOV, Ymar; a.k.a. SHUSHANASHVILI, Iasha Pavlovich; a.k.a. ''LASHA RUSTAVSKI''; a.k.a. ''LASHA RUSTAVSKY''; a.k.a. ''LASHA TOLSTY''), DOB 25 Jul 1961; POB Rustavi, Georgia; nationality Georgia (individual) [TCO].

5. VAGIN, Vladimir Viktorovich (a.k.a. ''VAGON''), Sadaf 2 Sector, Tower C06–T06, Apartment 603, Dubai 32900, United Arab Emirates; DOB 3 Feb 1966; POB Raditshevo, Russia; nationality Russia (individual) [TCO].

Dated: June 6, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–21898 Filed 9–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Individuals Pursuant to Executive Order 13581

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals whose property and interests in property have been blocked pursuant to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations'' (''the Order'').

DATES: The designation by the Director of OFAC of the five individuals identified in this notice pursuant to Executive Order 13581 is effective on August 1, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of

Foreign Assets Control, U.S. 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 on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

On July 24, 2011, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued the Order. In the Order, the President declared a national emergency to deal with the threat posed by significant transnational criminal organizations and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, that constitutes a significant transnational criminal organization, or materially to assist in, or provide financial or technological support for or goods or services in support of, persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On August 1, 2012, the Director of OFAC, in consultation with the Departments of Justice, and State, designated 5 individuals, whose property and interests in property are blocked pursuant to the Order.

The list of designees is as follows:

Individuals

CATERINO, Mario; DOB 14 Jun 1957; POB Casal di Principe, Italy (individual) [TCO]

DELL'AQUILA, Giuseppe (a.k.a. ''PEPPE 'O CIUCCIO''); DOB 20 Mar 1962; POB Giugliano Campania, Italy (individual) [TCO]

DI MAURO, Paolo; DOB 19 Oct 1952; POB Naples, Italy (individual) [TCO]

IOVINE, Antonio (a.k.a. ''O'NINNO''); DOB 20 Sep 1964; POB San Cipriano d'Aversa, Italy (individual) [TCO]

ZAGARIA, Michele (a.k.a. ''CAPASTORTA''; a.k.a. ''CAPOSTORTA''; a.k.a. ''ISS''; a.k.a. ''MANERA''; a.k.a. ''ZIO''); DOB 21 May 1958; POB San Cipriano d'Aversa, Italy (individual) [TCO]

Dated: August 1, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–21899 Filed 9–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals and two entities whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182). In addition, OFAC is publishing an amendment to the identifying information of one individual previously designated pursuant to the Kingpin Act.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the three individuals and two entities identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on August 29, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On August 29, 2012, the Acting Director of OFAC removed from the SDN List the three individuals and two entities listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individuals

1. MARTINEZ, Alicia (a.k.a. MARTINEZ GALINDO, Alicia), c/o AMG RICAS PIZZA, Bogota, Colombia; DOB 26 Mar 1948; Cedula No. 41386662 (Colombia) (individual) [SDNTK].
2. SARABIA DIAZ, Carlos Cristino, Calle Dalia No. 37, Colonia Aguaruto, Culiacan, Sinaloa, Mexico; c/o TOYS FACTORY, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o COMERCIAL JOANA, S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V., Culiacan, Sinaloa, Mexico; c/o COMERCIAL DOMELY, S.A. DE C.V., Toluca, Mexico, Mexico; DOB 24 Jul 1971; POB Culiacan,

Sinaloa, Mexico; nationality Mexico; citizen Mexico; R.F.C. SADC710724I71 (Mexico); C.U.R.P. SADC710724HSLRZR03 (Mexico) (individual) [SDNTK].

3. TARAZONA ENCISO, Nestor Alonso, c/o AGROPECUARIA LA CRUZ S.A., Bogota, Colombia; c/o CRIADERO LAS CABANAS LTDA., Bogota, Colombia; Calle 137 No. 52–37, Rincon Iberia, Bogota, Colombia; San Martin, Meta, Colombia; DOB 13 Jun 1965; Cedula No. 79344969 (Colombia) (individual) [SDNTK].

Entities

1. AGROPECUARIA LA CRUZ S.A., Calle 137 No. 88–76 Int. 2 Apto. 143, Bogota, Colombia; NIT # 813004216–1 (Colombia) [SDNTK].

2. CRIADERO LAS CABANAS LTDA., Calle 137 No. 88–76 Int. 2 Apto. 143, Bogota, Colombia; NIT # 816005110–5 (Colombia) [SDNTK].

In addition, OFAC has amended the identifying information for the following individual previously designated pursuant to the Kingpin Act:

1. FLORES CACHO, Javier, c/o LA NUMERO UNO DE CUAUHTEMOC S.A. DE C.V., Mexico City, Distrito Federal, Mexico; Avenida del Taller No. 23, Ret. 17, Colonia Jardin Balbuena, Delegacion Venustiano Carranza, Mexico City, Distrito Federal, Mexico; Martin Luis Guzman No. 259, Colonia Villa de Cortez, Mexico City, Distrito Federal, Mexico; DOB 30 Aug 1969; POB Mexico City, Distrito Federal, Mexico; nationality Mexico; citizen Mexico; R.F.C. FOCJ–690830 (Mexico); C.U.R.P. FOCJ690830HDFLCV03 (Mexico) (individual) [SDNTK].

The listing for this individual now appears as follows:

1. FLORES CACHO, Javier, Avenida del Taller No. 23, Ret. 17, Colonia Jardin Balbuena, Delegacion Venustiano Carranza, Mexico City, Distrito Federal, Mexico; Martin Luis Guzman No. 259, Colonia Villa de Cortez, Mexico City, Distrito Federal, Mexico; DOB 30 Aug 1969; POB Mexico City, Distrito Federal, Mexico; nationality Mexico; citizen Mexico; R.F.C. FOCJ–690830 (Mexico); C.U.R.P. FOCJ690830HDFLCV03 (Mexico) (individual) [SDNTK].

Dated: August 29, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–21887 Filed 9–5–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals and one entity whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''. In addition, OFAC is publishing an amendment to the identifying information of one individual previously designated pursuant to Executive Order 12978.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the five individuals and one entity identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on August 29, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, 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.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On August 29, 2012, the Acting Director of OFAC removed from the SDN List the five individuals and one entity listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. JARAMILLO ARIAS, Juan Guillermo, c/o PROVIDA E.U., Cali, Colombia; DOB 06 Dec 1959; Cedula No. 16634644 (Colombia); Passport 16634644 (Colombia) (individual) [SDNT].

2. TRISTAN GIL, Luz Maria (a.k.a. TRISTAN GIL, Luz Mery), Carrera 122 No. 20–02, Cali, Colombia; Calle 16 No. 15–30, Cali, Colombia; Calle 5B 4 No. 37–125, Cali, Colombia; c/o CREDISA S.A., Cali, Colombia; c/o LUZ MERY TRISTAN E.U., Cali, Colombia; DOB 01 Apr 1963; POB Cali, Valle, Colombia; Cedula No. 31895852 (Colombia); Passport 31895852 (Colombia) (individual) [SDNT].

3. RENTERIA CAICEDO, Maria Cecilia, 18801 Collins Avenue, Apt. 322–3, Sunny Isles Beach, FL 33160; Diagonal 130 No. 7–20, Apt. 806, Bogota, Colombia; 85 Brainerd Road, Townhouse 9, Allston, MA 02134; Avenida 11 No. 7N–166, Cali, Colombia; Calle 90 No. 10–05, Bogota, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; c/o CANADUZ S.A., Cali, Colombia; DOB 27 May 1981; POB Cali, Colombia; nationality Colombia; citizen Colombia; Cedula No. 52410645 (Colombia); Passport AF624588 (Colombia); alt. Passport AD454168 (Colombia) (individual) [SDNT].

4. ROJAS MEJIA, Hernan, c/o COLOR 89.5 FM STEREO, Cali, Colombia; Calle

2A Oeste No. 24B–45 apt. 503A, Cali, Colombia; Calle 6A No. 9N–34, Cali, Colombia; c/o CONSTRUCCIONES COLOMBO–ANDINAS LTDA., Bogota, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; c/o OCCIDENTAL COMUNICACIONES LTDA., Cali, Colombia; DOB 28 Aug 1948; Cedula No. 16242661 (Colombia) (individual) [SDNT].

5. CASTANO PATINO, Maria Janet, c/o CONSTRUVIDA S.A., Cali, Colombia; DOB 26 Oct 1958; Cedula No. 31149394 (Colombia) (individual) [SDNT].

Entity

1. LUZ MERY TRISTAN E.U. (a.k.a. CLUB DEPORTIVO LUZ MERY TRISTAN WORLD CLASS; a.k.a. LUZ MERY TRISTAN WORLD CLASS), Carrera 125 No. 19–275, Cali, Colombia; Diagonal 32 No. 37–125, Cali, Colombia; Holguines Trade Center L–239, Cali, Colombia; Calle 5B 4 No. 37–125, Cali, Colombia; Avenida 6 Norte No. 17–92 Apt. 508, Cali, Colombia; NIT # 805449310–7 (Colombia); alt. NIT # 805012268–9 (Colombia) [SDNT].

In addition, OFAC has amended the identifying information for the following individual previously designated pursuant to Executive Order 12978:

1. HODWALKER MARTINEZ, Martin David (a.k.a. ''TILO''), c/o VERANILLO DIVE CENTER LTDA., Barranquilla, Colombia; c/o MARTIN HODWALKER M. Y CIA. S. EN C., Barranquilla, Colombia; c/o YAMAHA VERANILLO DISTRIBUIDORES, Barranquilla, Colombia; c/o DESARROLLO GEMMA CORPORATION, Panama City, Panama; c/o HODWALKER Y LEAL Y CIA. S.C.A., Barranquilla, Colombia; c/o YAMAHA MUNDIAL LIMITADA, Santa Marta, Colombia; DOB 26 Dec 1968; POB Colombia; Cedula No. 8534760 (Colombia); Passport AF465508 Colombia (individual) [SDNT].

The listing for this individual now appears as follows:

1. HODWALKER MARTINEZ, Martin David (a.k.a. ''TILO''); DOB 26 Dec 1968; POB Colombia; Cedula No. 8534760 (Colombia); Passport AF465508 Colombia (individual) [SDNT] Linked To: YAMAHA VERANILLO DISTRIBUIDORES; Linked To: VERANILLO DIVE CENTER LTDA.; Linked To: MARTIN HODWALKER M. & CIA. S. EN C.; Linked To: DESARROLLO GEMMA CORPORATION; Linked To: HODWALKER Y LEAL Y CIA. S.C.A.

Dated: August 29, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–21888 Filed 9–5–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of 25 individuals and 1 entity whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the 25 individuals and 1 entity identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on June 13, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, 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.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On June 13, 2012, the Director of OFAC removed from the SDN List the 25 individuals and 1 entity listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. ARIAS GAMEZ, Johana Milena, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPCREAR, Bogota, Colombia; c/o JYG ASESORES LTDA., Bogota, Colombia; c/o SOLUCIONES COOPERATIVAS, Cali, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; Calle 69 No. 10A–53, Bogota, Colombia; Carrera 32 No. 25–71, Bogota, Colombia; DOB 06 Nov 1982; Cedula No. 52906667 (Colombia) (INDIVIDUAL) [SDNT].

2. ARJONA ALVARADO, Rafael Guillermo, c/o FARMATODO S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o ALPHA PHARMA S.A., Bogota, Colombia; c/o LABORATORIOS BLAIMAR, Bogota, Colombia; DOB 28 Jun 1961; Cedula No. 19442698 (Colombia) (INDIVIDUAL) [SDNT].

3. ABRIL RAMIREZ, Wilson Arcadio, c/o COOPCREAR, Bogota, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; DOB 25 Jul 1972; Cedula No. 79643115 (Colombia) Passport 79643115 (Colombia) (INDIVIDUAL) [SDNT].

4. ACHURY VARILLA, Hernan Augusto (a.k.a. ACHURY VARILA, Hernan Augusto), c/o COOPCREAR, Cali, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o ARCA DISTRIBUCIONES LTDA., Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; DOB 14 Feb 1980; Cedula No. 80226706 (Colombia) Passport 80226706 (Colombia) (INDIVIDUAL) [SDNT].

5. HACHITO SANCHEZ, Angel Alberto, c/o COPSERVIR LTDA., Bogota, Colombia; DOB 09 Nov 1962; Cedula No. 17634454 (Colombia) (INDIVIDUAL) [SDNT].

6. HERRERA AGUILERA, Augusto, c/o FARMAVISION LTDA., Bogota, Colombia; Cedula No. 17067884 (Colombia) (individual) [SDNT].

7. CASTANEDA, Martha Helena, c/o SOLUCIONES COOPERATIVAS, Cali, Colombia; Cedula No. 41658669 (Colombia) (INDIVIDUAL) [SDNT].

8. CORREDOR RUEDA, Jaqueline, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Calle 52A No. 31–67, Bogota, Colombia; Cedula No. 51815763 (Colombia) (INDIVIDUAL) [SDNT].

9. DAZA QUIROGA, Hugo Carlos, c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Cali, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogota, Colombia; DOB 23 Feb 1954; Cedula No. 19236485 (Colombia) (INDIVIDUAL) [SDNT].

10. FERNANDEZ GRANADOS, Claudia, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 57433265 (Colombia) (INDIVIDUAL) [SDNT].

11. FERNANDEZ LACERA, Felix Daniel, c/o COOPIFARMA, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Carrera 95 No. 68A–24 ap. 221, Bogota, Colombia; Cedula No. 4979304 (Colombia) (INDIVIDUAL) [SDNT].

12. GAMBA SANCHEZ, Fernando, c/o DISTRIBUIDORA DE DROGAS CONDOR S.A., Bogota, Colombia; DOB 03 Nov 1962; Cedula No. 19494919 (Colombia) (INDIVIDUAL) [SDNT].

13. GAMEZ, Gilberto, c/o ARCA DISTRIBUCIONES LTDA., Bogota, Colombia; Cedula No. 79846794 (Colombia) (INDIVIDUAL) [SDNT].

14. GONZALEZ, Maria Luz Nelly, c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; Cedula No. 51973466 (Colombia) (INDIVIDUAL) [SDNT].

15. GUTIERREZ RODRIGUEZ, Pablo, c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 85435604 (Colombia) (INDIVIDUAL) [SDNT].

16. MONTANO PACHON, Marlen, c/o COOPCREAR, Cali, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; Cedula No. 52492258 (Colombia) (INDIVIDUAL) [SDNT].

17. MORENO GOMEZ, Ingrid Del Carmen, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 49741445 (Colombia) (INDIVIDUAL) [SDNT].

18. ROCHA MERINO, Abel Zacarias, c/o COPSERVIR LTDA., Bogota, Colombia; c/o CAJA SOLIDARIA, Bogota, Colombia; Cedula No. 8758394 (Colombia) (individual) [SDNT].

19. MERCADO DE LA HOZ, Manuel Enrique, c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 72134380 (Colombia) (INDIVIDUAL) [SDNT].

20. TORRES REINA, Oscar Javier, c/o COOPCREAR, Cali, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; DOB 02 Jan 1978; Cedula No. 79886044 (Colombia) Passport 79886044 (Colombia) (INDIVIDUAL) [SDNT].

21. REINA DE TORRES, Rosalba, c/o TRIMARK LTDA., Bogota, Colombia; Cedula No. 41719184 (Colombia) (INDIVIDUAL) [SDNT].

22. SARMIENTO LAVERDE, Azucena Del Carmen, c/o MEGAPHARMA LTDA., Bogota, Colombia; Calle 22C No. 39–80, Bogota, Colombia; Carrera 20 No. 7–57, Bogota, Colombia; DOB 17 Nov 1954; Cedula No. 41649539 (Colombia) (INDIVIDUAL) [SDNT].

23. SUAREZ RIANO, Adela, c/o VILLARO LTDA., Bogota, Colombia; Cedula No. 39646144 (Colombia) (INDIVIDUAL) [SDNT].

24. CORREA GIRALDO, Ricardo Leon, c/o COOPCREAR, Cali, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; Carrera 1 No. 2–45 Bloque A ap. 33, Cali, Colombia; DOB 27 Oct 1954; Cedula No. 70085655 (Colombia) (INDIVIDUAL) [SDNT].

25. ROJAS DE MENDOZA, Marleny, c/o COOPIFARMA, Bucaramanga, Colombia; Carrera 17 No. 17–65, Bucaramanga, Colombia; DOB 26 Jan 1956; Cedula No. 63288987 (Colombia) (INDIVIDUAL) [SDNT].

Entity

1. YAMAHA MUNDIAL LIMITADA, Carrera 4 No. 5A–03, Santa Marta, Colombia; NIT # 900016791–2 (Colombia) [SDNT].

Dated: June 12, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–21896 Filed 9–5–12; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 77 Thursday,
No. 173 September 6, 2012

Part II

Department of Transportation

49 CFR Part 26
Disadvantaged Business Enterprise: Program Implementation Modifications; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST–2012–0147]

RIN 2105–AE08

Disadvantaged Business Enterprise: Program Implementation Modifications

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking (NPRM) proposes three categories of changes to improve implementation of the Department of Transportation's disadvantaged business enterprise (DBE) rule. First, the NPRM proposes revisions to personal net worth, application, and reporting forms. Second, the NPRM proposes modifications to certification-related provisions of the rule. Third, the NPRM would modify several other provisions of the rule, concerning such subjects as good faith efforts, transit vehicle manufacturers and counting of trucking companies.

DATES: Comments on this proposed rule must be received by November 5, 2012.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number OST–2012–0147) by any of the following methods:

- *Federal Rulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Note that all comments received will become part of the docket and will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.gpo.gov/fdsys/pkg/FR2010-29/pdf/2010-32876.pdfDocket.* For internet access to the docket to read background documents and comments received, go to *www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jo Anne Robinson, Office of General Law, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–9154, *joanne.robinson@dot.gov*.

SUPPLEMENTARY INFORMATION: In January 2011, the Department published a final rule making a number of important policy changes to the DBE program. These included requiring greater accountability for recipients with respect to meeting overall goals, adjusting the Part 26 personal net worth cap applicable to owners of DBE firms for inflation to $1.32 million, requiring greater monitoring of contracts by recipients, adding a small business element to recipients' DBE programs, and facilitating interstate certification. In order not to delay these policy initiatives, the rulemaking did not include other, more technical, program improvements. These include modifications to the forms involved with the program, changes to certification-related provisions in response to eligibility concerns that have come to the Department's attention, and modifications to a variety of other program provisions. This NPRM addresses this series of issues. The Department notes that the DBE program was recently reauthorized in the Moving Ahead for Progress in the 21st Century Act ('MAP–21'), Public Law 112–141 (enacted July 6, 2012). The Department believes that this reauthorization is intended to maintain the status quo of the DBE program and does not include any significant substantive changes to the program.

Forms

Personal Net Worth (PNW) Form and Related Requirements of 49 CFR 26.67

In an advance notice of proposed rulemaking (74 FR 15904; April 8, 2009), the Department asked for comments on potential improvements to the rule's PNW form. Some comments sought to simplify the forms, and other comments recommended additions. A number of commenters provided detailed suggestions about how the form should be configured. Based on the comments, as well as on the Department's experience with reviewing certification appeals and other issues that have come to the Department's attention, the Department is proposing a revised PNW form.

With respect to the PNW form, we mentioned in a June 2003 revision to Part 26 that we had not found anything more appropriate to capture a snapshot of a person's net worth than a Small Business administration (SBA) Form 413, and we included it in the Appendix. Some commenters recommended use of this form, with some modifications.

We have learned of several concerns regarding SBA Form 413. First, the instructions require each partner or stockholder with 20% ownership or more of voting stock to complete the form. This is not required by Part 26 and has caused some confusion. Second, in order to determine whether an applicant's net worth is below the threshold, more detailed information is needed by recipients than the SBA form provides. Third, an applicant has limited space for entering information, and it appears they are often supplementing their entries with separate documents. To correct these problems and help alleviate these concerns, the Department is proposing, in section 26.67 (a)(2)(i), the use of a newly designed PNW statement along with the accompanying instruction sheet (see the proposed Appendix B of the regulation) for use by all applicants to the program and those submitting annual affidavits. The Department would encourage recipients to post the new form electronically in a screen-fillable format on their Web site to allow users to complete and print the form on-line.

One commenter suggested that the Department mandate that the form be used without modification and that regulatory provisions be added to address violations by Uniform Certification Programs (UCPs) that modify the forms. We agree that the standard personal net worth form contained in Appendix G should be used in all cases and have stated so in this proposed revision. We understand, however, that individual situations and unique financial arrangements within certain industries may make it necessary for recipients to seek additional information beyond what is provided on the form.

For instance, if an applicant reports other business interests in section 5 of the new form, recipients should ascertain the value of these entities by obtaining financial statements, balance sheets, and federal/state tax returns. With this information, recipients will be able to verify the applicant's valuation of their ownership interests in these other firms. Similarly, an applicant

reporting stock and bond holdings should be asked to provide quarterly account statements. Also, directly written on the form in section 2 (Real Estate Owner) is the requirement that applicants submit copies of real estate deeds, mortgage notes, and instruments of conveyance. In short, recipients are encouraged, during their review of the firm's eligibility, to look behind the statement and these submissions, and request additional information if necessary. Firms must cooperate with these requests pursuant to § 26.73(c) and § 26.109(c), and a failure or refusal to provide such information is a ground for a denial or removal of certification.

We propose to amend paragraphs (a)(2)(ii) and (iii) to stress that the PNW statement must include all assets owned by the individual, including any ownership interests in the applicant firm, personal assets, and the value of his or her personal residence excluding the equity. Item iii(B) clarifies that the equity in an owner's primary residence is the market value of the residence less any mortgages and home equity loan balances. It also states the basic consideration that recipients are to ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form.

Paragraph (b) of § 26.67 currently states that if an individual's statement of personal net worth shows that he or she exceeds the limitation of $1.32 million the individual's presumption of disadvantage is rebutted.

We propose adding a second component to this statement taken from the Department's long-standing guidance on personal net worth—if the person demonstrates an ability to accumulate substantial wealth, has unlimited growth potential, or has not experienced or has not had to overcome impediments to obtaining access to financing, markets, and resources, the individual's presumption of economic disadvantage is rebutted, even if the individual's PNW is less than $1.32 million. As stated in this new section and demonstrated in an example contained in the regulation text, it is appropriate for recipients to review the total fair market value of the individual's assets and determine if that level appears to be substantial and indicates an ability to accumulate substantial wealth. If a recipient makes this determination this may lead to a conclusion that the individual is not economically disadvantaged. The purpose of this proposed amendment is to give recipients a tool to exclude from the program someone who, in overall assets terms, is what a reasonable person would consider to be a wealthy individual, even if one with liabilities sufficient to bring his or her PNW under $1.32 million. The Department also seeks comment on whether a more bright-line approach would be preferable, such as saying that someone whose Adjusted Gross Income on his or her Federal income tax return was over $1 million for two or three years in a row would lose the presumption of economic disadvantage, regardless of PNW.

In certain instances, assets that individuals have transferred two years prior to filing their certification application may be counted when calculating their PNW. These circumstances are currently described in Appendix E, which attributes to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of a participant's annual program review. The Department proposes to add this same language directly to the regulation text at § 26.67 in a new paragraph (e).

We are also proposing to add a provision concerning transfers from the DBE owner to the applicant firm. This is necessary for two reasons. First, the placement of the added language within the current section better emphasizes the importance of considering transfers of funds from the DBE owner to the applicant firm when assessing a person's economic disadvantage. Second, we have learned of situations in which DBE owner/applicants are shielding a portion of their personal assets by transferring them to the applicant firm that he/she owns and controls. The Department recognizes that such financial transactions may be an acceptable business practice; however, we also recognize that asset transfers can be used to artificially depress their PNW in order to qualify for the program. Because the regulation excludes the ownership interest in the applicant firm in calculating its owner's PNW, the ability to transfer one's personal assets to this entity would defeat the purpose of ensuring that only economically disadvantaged individuals participate in the DBE program.

Additional portions of this section taken from Appendix E would be retained. These provisions state that transfers will be included in a person's net worth unless the individual claiming disadvantaged status can demonstrate that the transfer is to, or on behalf of, an immediate family member for that individual's education, medical expenses, or some other form of essential support. In addition, recipients are not to attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements. The Department seeks comment on whether these exceptions to the inclusions of transfers in someone's PNW would open an overly wide opportunity for people to artificially understate their assets. If so, how should such transfers be handled?

The Department also seeks comment on whether the spouse of an applicant owner should have to file a PNW statement, even if the spouse is not involved in the business in question. In this connection, we note that SBA requires the submission of a separate form from a non-applicant spouse if the applicant is married and not legally separated. Currently, recipients in the DOT program can request relevant information from spouses on a case-by-case basis. The complexities of jointly owned assets and liabilities and the ability of married couples to transfer assets in order to participate in the program could make it useful to certifying agencies to have PNW information about spouses. Recipients could use the net worth statement submitted by a non-applicant spouse as a way check to see whether applicants have transferred assets and as a basis to inquire further as to the circumstances. While this information could improve recipients' ability to protect the integrity of the program, requiring detailed information from spouses not involved with a company could also prove intrusive and add considerably to the information burden of the program for applicants and the volume of materials that recipients would have to review and evaluate. We also seek comment on whether the treatment of assets held by married couples should extend to couples who are part of domestic partnerships or civil unions where these relationships are formally recognized under state law.

In addition, we seek comment on whether the Department should adopt a provision similar to SBA language which considers a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (e.g. an officer, employee, director) or has lent money to, provided credit support to, or guaranteed a loan of the business. Although the Department does not use

''access to credit and capital'' as criteria for certification, should the involvement of a spouse in the firm trigger further consideration of their net worth and should the recipient collect the personal financial statement from this person? Are there other circumstances that would warrant this?

Application Form

Under the current DBE rule, certification occurs on a statewide basis through the Unified Certification Program (UCP) in each state. The ''one-stop shopping'' for DBE applicants within a state has simplified certification by making it unnecessary for recipients to apply multiple times for certification by various transit authorities, airports, and highway departments.

In the May 10, 2010 NPRM, we proposed several enhancements to the program to facilitate interstate certification and interstate reciprocity, many of which appear in the revised rule issued by the Department on January 27, 2011. In order to reach the goal of a simplified administrative process for certification, it is necessary to revisit the DBE/ACDBE Certification Application form used by firms applying for certification. The current form, adopted in the June 16, 2003, regulation revision (68 FR 35542), was designed to be more streamlined and user-friendly, yet comprehensive enough to supply recipients with the necessary information to form their initial line of questioning prior to and during an on-site visit and to further assist them in making determinations as to applicants' qualifications for the DBE Program. At the time, the Department sought to keep the form manageable, easy to read, and easy to follow for applicants who must fill out the form, while simultaneously being accessible and practical for many recipients that distribute the form.

It is important to bear in mind that certification has two purposes. One is to foster and facilitate DBE participation by as many firms as can be determined to be eligible. The other is to preserve the integrity of the program, a strong certification system being the first line of defense against program fraud. To some extent, these goals can be in tension with one another, particularly when information collection can be viewed as burdensome to applicants but also viewed as necessary to recipients' efforts to maintain program integrity.

Certainly, an application form that remains accessible and usable by firms is a priority, and the Department encourages the continued efforts by recipients to post the form on the Internet in a screen-fillable format. Some commenters on the ANPRM sought ways to simplify the forms, while others recommended additions. A number of commenters provided detailed suggestions about how the forms should be configured. Based on the comments, as well as on the Department's experience with reviewing certification appeals and other issues that have come to the Department's attention, the Department is proposing a revised application form.

The proposed DBE/ACDBE Certification Application form and accompanying instructions would be used for both the DBE and ACDBE programs. Applicants will be requested to provide such items as: (1) A list of dates of any site visits conducted by the firm's home state and any other UCP members; (2) details concerning denial or decertification, withdrawals, suspension/debarment actions; (3) a business profile seeking a concise description of the firm's primary activities, products, or services the company provides; (4) a written description of the applicant's relationships and dealings with other businesses, including the sharing of equipment, storage space, inventory, and staff; (5) an assessment of the amount of time the majority owner and key officers, directors, managers, and key personnel devote to firm activities such as bidding and estimating, supervising field operations, and managing staff or crew, and (6) résumés and salaries of owners, directors, managers and key personnel. The proposed form would also remove obsolete material (e.g., relating to a now-expired SBA–DOT memorandum of understanding). The proposed form revisions include commonly requested items as well as items already mentioned in the existing regulation at § 26.83. ACDBE applications would be requested to provide details concerning their concession leases at airports.

DBE Commitments/Awards and Payment Reporting Form

The Department has identified several concerns regarding the format of Uniform Report of DBE Commitments/Awards and Payments form found in Appendix B of 49 CFR part 26. These include the inability to break out woman-owned DBE participation by race; inadequate, confusing or unclear instructions; inability of the form to meet differing needs of the various types of organizations/businesses participating in the DBE program; and difficulties in collecting information regarding payments to DBE on an ongoing/''real time'' basis. The Department believes the proposed form responds to these concerns by: Creating separate forms for routine DBE reporting and for transit vehicle manufacturers (TVMs) and mega projects; amending and clarifying the report's instructions to better explain how to fill out the forms; and changing the forms to better capture the desired DBE data on a more continuous basis, which should also assist with recipients' post-award oversight responsibilities.

A 2011 Government Accountability Office (GAO) report criticized the existing form because it did not permit DOT to match recipients' DBE commitments in a given year with actual payments made to DBEs on the contracts to which the commitments pertained. The form provides information on the funds that are committed to DBEs in contracts let each year. However, the ''achievements'' block on the form refers to DBE payments that took place during the current year, including payments relating to contracts let in previous years, but could not include payments relating to contracts let in the current year that will not be made until future years.

The form in the NPRM, while attempting to clarify various parts of the reporting process, does not directly address this issue. However, it would be possible for the Department, by looking at data in 3–5 year groupings, to assemble a surrogate for the comparison that GAO recommended. For example, if the Department looked at data from 2009–2011, we could calculate an average annual amount of commitments over that period and an average amount of DBE payments over that period. While there would still not be a year-to-year correspondence between commitments and payments, this approach could smooth out statistical anomalies (e.g., years with unusually high or unusually low commitments or payments), providing a reasonable approximation of the success of recipients in ensuring that commitments are realized in terms of actual payments.

The Department could also modify the form to reach more directly the result that GAO recommended. The modification of the achievements portion of the form could look something like this:

ACTUAL PAYMENTS TO DBES FOR COMPLETED CONTRACTS

Year contract awarded	Number of contracts completed that were let in each year	Total $ value of contracts completed	DBE participation needed to meet $ committed	Total $ paid to DBEs	Total % of $ committed paid to DBEs
2012					
2011					
2010	4	$10m	$1m	$900k	90%
2009					
2008					
2007					

In each row, data would be entered pertaining to payments from contracts let in a given year that were completed during the reporting year. By the time all contracts let in that year had been completed, DOT could compile the data to compare the recipient's payments to DBEs for payments in a given year to commitments and to goals.

In the example above, a recipient sends in the form in 2012. It shows four contracts let in 2010 were completed in 2012, with a total value of $10 million. The commitments on those contracts, made in 2010, were $1 million. However, actual payments were $900,000, meaning that the DBEs realized only 90 percent of the dollars committed to them in 2010 on commitments made during 2010. Of course, it would be necessary to accumulate these forms for another few years to account for contracts that were not completed until 2013, 2014, etc. Consequently, while use of this form would allow the calculation of more precise data on how well a recipient had performed in terms of ensuring that commitments resulted in payments (and consequently how it had performed in terms of meeting its goals in payment as well as in commitment terms), this calculation would take several years to accomplish and would involve greater use of resources by recipients and the Department. It may also be questioned whether getting this information 3–5 years after the year in which contracts are let would limit too greatly the use of the resulting numbers for program administration and oversight purposes.

The Department seeks comment on how this latter alternative might be improved, and also on which of the alternatives discussed here, or other ideas, would best serve the accountability and program administration objectives of the Department.

Certification Provisions

§ 26.65 What rules govern business size determinations?

In this NPRM, the Department proposes to adjust the statutory gross receipts cap for inflation to $23.98 million. The inflation rate on purchases by state and local governments for the current year is calculated by dividing the price deflator for the first quarter of 2012 (124.668) by 2008's fourth quarter price deflator (116.524). The result of the calculation is 1.0699, which represents an inflation rate of 1.070% from the fourth quarter of 2008. Multiplying the $22,410,000 figure for disadvantaged business enterprises in Department of Transportation financial assistance programs by 1.0699 equals $23,976,459, which will be rounded off to the nearest $10,000, or $23,980,000.

In addition, we propose to add language to the section clarifying that the size standard that applies to a particular firm is the one appropriate to its primary industry classification.

§ 26.69 What rules govern determinations of ownership?

Most firms, particularly those owned and controlled by socially and economically disadvantaged individuals, begin as small operations. Their owners often contribute their own funds or assets to equip the firm (referred to as equity financing) and/or borrow or pledge their own assets as collateral in order to receive needed funds from lending institutions or venture capitalists, friends, relatives, or industry colleagues (referred as debt financing). While each financing transaction has its own unique set of circumstances and requirements, it is fair to say that lenders often require some form of the borrower's personal guarantee.

The DBE rule reflects this reality in two of its stated objectives: (1) Create a level playing field for firms to compete for DOT-assisted contracts, and (2) assist the development of firms that can compete successfully outside the program. To achieve these objectives, it is necessary to ensure that firms are truly owned and controlled by persons who are socially and economically disadvantaged. The Department incorporated the concept of ''ownership'' in the regulation by requiring the socially and economically disadvantaged owner to demonstrate his or her personal stake in their firm. Specifically, under § 26.61 and § 26.69, socially and economically disadvantaged individuals who seek to participate in the program bear the burden of demonstrating that it is they who have made a contribution of capital to acquire their ownership in the firm. This contribution must be ''real, substantial, and continuing, going beyond pro forma ownership of the firm.'' The regulation does not define these terms, but § 26.69(e) does provide some examples of what the Department considers to be an insufficient contribution, including a promise to contribute capital, and an unsecured note payable to the firm or an owner who is not a disadvantaged individual.

Throughout the course of the program, Unified Certification Programs (UCPs) evaluating a firm's eligibility have properly denied certification to DBE and ACDBE applicants when an owner's contribution was either not real (suggesting the owner did not actually make the contribution), insubstantial (not enough of a contribution was provided for what was received), not continuing (no subsequent contribution to the firm or rapid withdrawal of a contribution that was made), or simply a pro forma arrangement (conveying the concept of a firm created on paper but without actual evidence of a personal contribution). For example:

- A capital contribution by the disadvantaged owner of $100 is not considered substantial to acquire a majority interest in a firm worth $1 million.
- A situation in which 51% disadvantaged owner and a 49% non-disadvantaged owner who contribute $100 and $10,000, respectively, to

acquire a firm grossing $1 million, may be indicative of a pro forma arrangement.

• A recipient can properly question the continuing nature of an owner's contribution when it finds that the sole owner of a DBE applicant firm spends $250 to file articles of incorporation and obtains a $100,000 loan, making only nominal or sporadic payments to repay the loan.

In each of these examples, the DBE firm is could appropriately be denied certification on the grounds that the owner's contribution of capital does not meet the requirements of § 26.69. In other arrangements, non-disadvantaged individuals and non-disadvantaged firms may have contributed or loaned funds to the disadvantaged owners at the inception of the firm and/or provided ongoing monetary support to the business. These arrangements and the source of the funds are appropriately questioned by recipients, based on provisions contained in the existing § 26.69(h). This section currently prescribes a higher ''clear and convincing'' standard in situations where non-disadvantaged individuals or non-DBE firms that remain involved in the firm provide interests in a business or gift other assets to the disadvantaged owner applying for DBE certification. It requires the disadvantaged owner to demonstrate that the gift or transfer they received was made for reasons other than obtaining DBE certification and that the disadvantaged owner(s) actually control the management, policy, and operations of the firm, notwithstanding the continuing participation of the non-disadvantaged individual providing the gift or transfer. This safeguard is necessary to reduce the potential for front companies and fraud. We stated that as long as there are safeguards such as § 26.69(h) in place to protect against fronts, the origin of the assets, whether from one's own contribution, a bank loan, gift, inheritance, or other means, is unimportant.

In proposed section 26.69(c)(2), we propose to add language prohibiting situations in which a non-disadvantaged party (e.g., an individual, a company) has a prior or superior right to a DBE firm's profits, compared to that of disadvantaged owners of the DBE. Arrangements in which non-disadvantaged owners get paid a percentage the firm's net profits, before any calculation of residual profit available for other firm purposes, defeats ''ownership'' by the disadvantaged owners. For example, in the context of certification appeals, the Departmental Office of Civil Rights (DOCR) has seen profit sharing and other arrangements through which the disadvantaged owner is paid after another owner holding less of an interest. This is particularly prevalent in ACDBE situations in which the prime is paid first from firm profits despite the fact that the socially/economically disadvantaged owner holds the majority interest on paper.

When a non-disadvantaged individual remains involved in a firm, § 26.69(h) adequately provides recipients with the tools to make an appropriate evaluation of the applicant firm's eligibility. We are learning, however, that recipients are encountering cases in which a non-disadvantaged individual or non-DBE firm provided some form of financing at the firm's inception, enabling a disadvantaged owner to acquire an interest in the firm, in exchange for an ownership interest. These types of arrangements call into question whether a disadvantaged owner's ownership is ''real, substantial, and continuing'' and what considerations should be used in evaluating the timing of transactions.

While the Department remains committed to the principle that firms are evaluated based on present circumstances (see section 26.73(b)(1)), it is also important to pay attention to the commercial and arms-length practices involving collateral, as well as the nature, origination, and timing of firm acquisition or establishment (i.e., the real and continuing requirement). This concern applies to situations in which non-disadvantaged individuals and firms remain involved in the firm and in situations where they do not. We are also concerned that the substantiality of ownership interests be considered in the entire context of the arrangement and in comparison to the overall value of the firm. We believe that greater clarity and specificity in DOT rules would be useful in helping recipients deal with situations of this kind.

This was most evident in *The Grove, Inc.* v. *U.S. Department of Transportation,* (578 F.Supp. 2d 37, D.D.C., 2008), a case that upheld the DOCR certification appeal decision that The Grove, Inc., an ACDBE, lacked independence from a non-DBE entity that was intertwined in The Grove's finances. However, the Court overturned a portion of the DOCR's determination that the disadvantaged owner failed to make a real and substantial contribution of capital to acquire her ownership interest in the firm. At issue in the case were the current provisions in § 26.69 regarding the use of unsecured loans from non-disadvantaged individuals and how to treat personal and marital assets used as collateral to acquire an ownership interest asserted by one spouse. The case also presented issues relating to the timing of a transfer of funds from a non-disadvantaged individual and the disadvantaged owner's subsequent deposit of these funds into a joint/marital account. The Court ruled that that regulation clearly contemplates the use of funds derived from a non-disadvantaged individual or entity as a means to acquire an ownership interest. It also addressed what would be considered a reasonable amount of contribution given the size of the firm at the time the disadvantaged owner acquired her majority interest. It ruled that the Department did not provide a rationale why a gross profit measure is the appropriate measure to value a company as opposed to another method, such as operating margin or net income when making this determination.

To avoid problems of this kind, the Department believes it necessary for applicants to submit additional proof to substantiate both the sufficiency of their contribution and the circumstances of any funding streams to the firm since its inception. This includes documentation of how items used as collateral (whether jointly held or otherwise) are valued, and proof of ownership in these items (particularly high valued assets), and more stringent guidelines for deposits of funds used to acquire the ownership interest in a firm. These additions are reflected in proposed revisions to § 26.69(a) and (c)(1). The revision to (c)(3) concerning dividends and distributions proposes to mandate that one or more disadvantaged owners must be entitled to receive at least 51% of the annual distributions of dividends paid on the stock of a corporate concern; 100% of the value of each share of stock owned by them in the event that the stock is sold; and at least 51% of the retained earnings of the concern and 100% of the unencumbered value of each share of stock owned in the event of dissolution of the corporation. Of course, consistent with section 26.71(i)(1), recipients should also be aware of issues concerning differences in remuneration that could affect the disadvantaged owner's control of a firm.

A revision to § 26.69(i) would add a new requirement concerning marital assets that form the basis for ownership in the firm. Under this proposed provision, recipients would have discretion in cases where marital assets are used to require information concerning the spouse's assets and liabilities. The recipient would then make a case-by-case determination of whether the asset transfer was made for

reasons other than obtaining certification as a DBE.

In paragraph (i), concerning joint or community property, we seek comment on whether greater protections are needed to prevent what are effectively a non-disadvantaged husband's assets from being treated as the capital contribution made by his wife. At present, the wife's share or joint or community property is countable toward ownership requirements if the husband renounces his ownership interest in the property. We propose to strengthen this provision by adding a sentence to paragraph (i)(2) saying that such a renunciation must be contemporaneous with the transfer itself, to avoid after-the-fact gamesmanship.

A new paragraph (k) would incorporate language similar to § 26.69(j)(3), which requires recipients to give ''particularly close and careful scrutiny to the ownership of the firm to ensure that it is owned and controlled in substance as well as in form, by a socially and economically disadvantaged individual.'' The wording of this section is one way to guard against an artificial arrangement or accounting mechanism that gives the appearance that a firm was derived from the disadvantaged owners' own assets, when in reality it was not. In the ANPRM, we invited comments on what additional safeguards could be incorporated to meet this goal without placing undue burden on the applicant firm. The NPRM's draft paragraph (k) answers this question by telling recipients to give ''particularly close and careful scrutiny to all interests in a business or other assets obtained by a socially and economically disadvantaged owner that resulted from a seller-financed sale of the firm or in cases where a loan or proceeds from a non-financial institution were used by the owner to purchase the interest.''

The following proposed conditions would apply to such a transaction: (1) Terms and conditions must be comparable to prevailing market conditions offered by commercial lenders for similar type of projects (e.g., in terms of such factors as duration, rate, and fees); (2) there must be evidence provided by the applicant firm and disadvantaged business owner of the promissory note or loan agreement clearly stating the terms and conditions of the loan, including due date and payment method, interest rate, prepayment, defaults, and collateral; (3) the note would be a full-recourse note and be personally guaranteed by the socially and economically disadvantaged owner and/or secured by assets outside of the ownership interest or future profits of the applicant firm; (4) the contributions of capital by the socially and economically disadvantaged owner and any use of collateral by the disadvantaged owner must be clearly evident from the firm's and/or individual's records and supported by appropriate documentation and appraisals; and (5) other than normal loan provisions designed to preserve property pledged as collateral, there are no conditions, provisions, or practices that have the effect of limiting the socially and economically disadvantaged owner's ability to control the applicant firm. As in all certification matters, the applicant would bear the burden of proving that the transaction meets these criteria.

§ 26.71 What rules govern determinations concerning control?

This section is intended to ensure that recipients analyze the extent to which socially and economically disadvantaged individuals control their firm in both substance and form. Along with ownership, control of an applicant or participating firm is a central concept to the DBE and ACDBE programs and the Department seeks to guard against control of the firm's ownership structure, its operations, and policy decisions by non-disadvantaged individuals. Currently, the involvement of non-disadvantaged individuals in the firm's affairs is addressed in several parts of this section, including 26.71(e), (f), and (l). In the Department's view, the disadvantaged owners' talent and expertise and that of non-disadvantaged participants must be judged concurrently. In situations where the disadvantaged owner of an applicant or participating DBE firm meets the requirements of 26.71(g), the involvement of non-disadvantaged individuals is one of support rather than control, with a clear line of authority and decision making ability passed from the owner to the non-disadvantaged employee. Alternatively, where the disadvantaged owner possesses little or no experience or expertise, non-disadvantaged individuals can be seen as more involved in the firm's affairs such as controlling field operations, making major firm decisions, or supervising other employees in the critical areas of the firm's work. They are frequently compensated at a higher rate, and all indications point to their disproportionate role at the firm above and beyond that deemed acceptable in the DBE program. To explicitly address these scenarios, the Department is placing more stringent control requirements in paragraph (e). We are proposing to add a new section regarding non-disadvantaged individuals who once served as an employer or a principal of a former employer of any disadvantaged owner of the applicant or DBE firm. Under the proposal, this would form a basis for denying certification unless it is determined by the recipient that the relationship between the former employer or principal and the disadvantaged individual or applicant concern does not give the former employer actual control or the potential to control the applicant or DBE firm. To illustrate the potential scenarios wherein non-disadvantaged individuals may be found to control the firm, the proposed paragraph (e)(2) provides examples of unacceptable arrangements that negatively affect a disadvantaged owners' control of the firm.

The current § 26.71(l) requires a higher evidentiary standard to be met in situations where a firm was formerly owned and/or controlled by a non-disadvantaged individual and such ownership and/or control is transferred to a socially and economically disadvantaged individual, where the non-disadvantaged individual remains involved in the firm. In such a situation, § 26.71(l) requires that the disadvantaged individual now owning the firm demonstrate by ''clear and convincing evidence'' that: (1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and (2) the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm. The Department seeks comment on whether this provision should be strengthened by presuming, that non-disadvantaged individuals who make such transfers and remain involved in the firm continue to control the business, rather than the disadvantaged transferee.

§ 26.73 What are other rules affecting certification?

Under the current 26.73(g), a recipient must not require an applicant firm to be prequalified as a condition for certification ''unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.'' We propose to delete this part of this statement, with the result that prequalification could no longer be used as a criterion for certification in any case. While the Department believes that prequalification requirements may be an unnecessary barrier to DBE

participation, this provision would not prohibit prequalification as a condition for receiving certain sorts of contracts. However, whether a firm is prequalified is irrelevant to certification concerns such as size, disadvantage, ownership and control. It is important for certifiers to analyze only the factors relevant to DBE eligibility and not incorporate other recipient business requirements in decisions pertaining to an applicant's qualification for the program. Further, while prequalification may be a requirement for doing business in one mode (e.g., highway) it may not be a requirement for doing business in other modes (e.g., transit).

§ 26.83 What procedures do recipients follow in making certification decisions?

Under the current rule, recipients must take several steps in determining whether a firm meets all eligibility criteria for participation in the DBE program. The on-site visit to the firm's place of business and job sites is a crucial component of this review and the Department seeks to strengthen the information collection process. Since the issuance of the 1999 rule, the Department has received numerous appeals filed by firms denied certification on the basis of control, specifically the involvement of non-disadvantaged individuals in the firm's critical activities. Recipients base their decision after performing an on-site review of the firm and the responses owners give to their questions during the visit.

Interviewing the principal officers of the firm is required under § 26.83(c). Some recipients, however, also interview key personnel of the firm as a means to verify or cross-check the answers they receive from the owners. We believe this is an important practice recipients should perform before determining the firm's eligibility. In addition, interviewing employees reveal how they fit in the firm's overall daily operations and management vis-à-vis the owners. By speaking with these individuals as well, recipients gain a clearer view of how owners oversee a project, whether from behind a desk or at the field. An owner who is primarily in the office handling paperwork may have delegated too much authority to employees in the field, a factor that negatively affects their control of the firm. Therefore, the Department proposes adding a requirement that recipients interview the key personnel of the firm. In addition, the on-site visit should be performed at the firm's principal place of business, which may or may not be the same as the firm's offices. Both revisions appear in the first two sentences of § 26.83(c)(1).

Paragraph (c)(2) requires a recipient to analyze the stock ownership in a firm. Here, the Department proposes adding clarifying language that would require an analysis of documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; and stock ledgers and certificates. Similarly, a revised section (c)(3) and (c)(4) would add the requirement that recipients also analyze any lease and loan agreements, bank signature cards, and payroll records.

Where a firm is applying to be certified in more than one North American Industrial Classification System (NAICS) code, the NPRM (§ 26.83(c)(5)) would call on recipients to obtain information about the amount of work the firm has performed in the various NAICS codes involved. This will help recipients determine the socially and economically disadvantaged owners' level of knowledge in each category of work and whether they can control the firm's operations in these areas in accordance with § 26.71. The proposed Uniform Certification Application contains added space for firms to enter their NAICS Codes directly on the form, which in turn will help recipients with this determination. Particularly for start-up firms or for firms moving into new areas of work, we do not intend that recipients establish any sort of minimum ''track record'' as a prerequisite to certification. This proposed amendment is simply intended to provide what can be additional useful information in some cases.

Recipients also determine whether a firm meets the applicable size standards and if the applicant owner is economically disadvantaged. Tax returns are important information for this task. The proposed (c)(7) clarifies that applicants need to provide completed income tax returns or requests for extensions filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last three years. (We recognize that, for start-up or other new firms, three years' worth of tax returns may not yet exist.) As stated in the new paragraph, a complete return is one that includes all forms, schedules, and statements filed with the Internal Revenue Service, and state taxing authority. The proposed DBE/ACDBE application form has been amended to specifically require this information.

At various times during the application review process, recipients may seek more information from an applicant. In (c)(8)(iii), we propose to add language making explicit the discretion of certifying agencies to request clarification of information contained in the application, or to request additional information, at any time in the application process. This will help alleviate confusion by firms that believe their application is complete once it is submitted and that the UCP must make a decision solely on the information the firm has initially provided. At the same time, we caution certifying agencies against prolonging the certification process unnecessarily through repeated requests for additional information, once enough data to make an informed decision possible has been submitted.

§ 26.83(h) and (j)

Paragraph (h) emphasizes that once a firm is certified, it remains certified unless and until it voluntarily withdraws from the program or is decertified (with the exception of circumstances spelled out in section 27.67, when an owner's PNW statement shows that the owner is no longer a disadvantaged individual). There can be partial as well as total decertifications (i.e., when a NAICS code in which a firm is currently certified is taken away). Partial and total decertifications both require use of the section 26.87 process. Recipients are reminded that certifications do not lapse; they are not like driving licenses, which expire after a given number of years if not renewed. There is no such thing as a ''recertification'' process, after three years or any other period, and recipients cannot require currently certified firms to reapply for certification. Any recipient who does so is acting contrary to the express requirements of this rule. However, if, at any time, information comes to a recipient's attention that would cause it to question a firm's continued eligibility, the recipient can, and should, review the firm's certification status, in the course of which it can conduct a new on-site review, announced or unannounced. Because firms' circumstances can change over time, we urge recipients, as a matter of good practice, to conduct reviews of firms' eligibility, including updated on-site reviews, from time to time.

The Department is not changing the long-standing practice of annual affidavits of no change, and we believe that this requirement is crucial to keep

recipients current on the status of certified firms. The NPRM would strengthen this process by directing certified firms to submit additional items with their affidavits. The additional information would include updated PNW statements and a record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member, or to a trust any beneficiary of which is an immediate family member, within two years of the date of the annual review. In addition, the firm would have to submit a record of all payments, compensation, and distributions (including loans, advances, salaries and dividends) made by the DBE firm to each of its owners, officers or directors, as well as the firm's (and its affiliates') and owners' most recent completed IRS tax returns, IRS Form 4506 (Request for Copy or Transcript of Tax Return). Recipients would also have the discretion, on a case-by-case basis, to obtain other information relevant to determinations about the firm's size and its ownership and control by disadvantaged individuals.

§ 26.86 What rules govern recipients' denials of initial requests for certification?

Under paragraph (c) of this section, when a firm is denied certification, the recipient must establish a time period of no more than twelve months that must elapse before the firm may reapply for certification. This waiting period can be shorter, but, as stated in the rule, the time period for reapplication begins to run on the date the recipient's action is received by the firm. The NPRM would add a sentence clarifying that an applicant's appeal of a recipient's decision to the Department pursuant to § 26.89 does not extend this period. For example, suppose a firm is denied certification on September 1, 2012. If the recipient has six-month waiting period, the firm could reapply on March 1, 2013. If, in the meantime, the firm appealed the decision to the Department, it could still reapply on March 1, 2013, even if its appeal to the Department was still pending on that date.

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

The Department is proposing to revise and expand the grounds on which recipients can, in the interest of program integrity, decertify DBE firms. First, the Department would delete the first sentence of 26.87(f), which says that a recipient cannot remove a DBE's eligibility on the basis of a reinterpretation or changed opinion of information available to the recipient at the time of the firm's certification. This language was intended to create a degree of finality in certifications. There can be certification decisions about which reasonable people can differ, and we believe, as a matter of policy, that it is useful to limit situations in which, for example, a new certification official reviews the same facts that his or her predecessor reviewed but simply forms a different opinion. That said, certifying agencies have expressed concerns that this language is too limiting, particularly for situations in which it appears that a bad mistake led to a firm's certification.

In an attempt to better accommodate both objectives, we are proposing a revised paragraph (f)(5) that would permit a recipient to decertify a firm on the basis that its certification was clearly erroneous. This standard means that the basis for the decertification would be a definite and firm conviction on the recipient's part that a mistake was committed, in the absence of which the firm would not have been certified. This is more than a simple difference of opinion or different judgment call about the evidence in the matter. To decertify a firm based on this paragraph, the recipient would have to show, by the usual preponderance of the evidence standard it must meet in decertification cases, that the original certification was clearly wrong.

We also propose to add two additional grounds for decertification, both of which refer to other provisions in the regulations. Consistent with section 26.73(a)(2), a firm can be decertified for exhibiting a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program by, for example, repeatedly seeking DBE credit for activities that fail to involve a commercially useful function and thereby raise questions about the firm's eligibility. Likewise, a firm can be decertified for a failure to cooperate, under 26.109(c). A failure to cooperate can include such things as failure to timely file affidavits of no change or notices of change, PNW statements, and various required supporting documents.

We also note that the current provisions of paragraph (f) cover a number of situations that can arise. For example, paragraph (f)(3), concerning concealed or misrepresented information, covers submission of false information in applications, PNW statements, affidavits of no change, etc. Paragraph (f)(1) covers situations where changes in ownership, death or incarceration of a disadvantaged owner, changes in the disadvantaged owner's involvement with management of the firm, changes in the firm's relationship with other firms, etc. may make a previously eligible firm no longer eligible. The provisions relating to failure to cooperate covers such things as failing to send in affidavits of no change or notices of change, and accompanying documents, when needed.

We also seek comment on the relationship between decertification and suspension and debarment proceedings. If a firm is suspended or debarred (e.g., as the result of a criminal indictment or conviction), either as a matter of state or Federal action, should the firm also be decertified? On one hand, since the firm is suspended or debarred, it will not be performing any contracts, so its being or not being on a state's certified list seems somewhat moot. Moreover, certification concerns size, disadvantage, ownership and control, and the misconduct of the firm may not relate to these criteria. On the other hand, especially if the misconduct that led to the suspension and debarment concerned participation in the DBE program, the firm's conduct may constitute a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program. Should suspension and debarment result in an automatic decertification, should it be a trigger causing recipients to evaluate the firm for decertification, or is there another approach that would make more sense?

In paragraph (g), we would add a sentence clarifying that when a notice concerning a recipient's response to an ineligibility complaint is sent to the complainant (other than to a DOT operating administration), confidential business information concerning the DBE in question would be redacted, absent written consent from the DBE firm. This is consistent with the existing confidentiality provisions of section 26.109.

§ 26.88 Summary Suspension of Certification

As noted above, a certified firm remains certified until and unless it is decertified. But what happens if there is a significant change in the business, such as the death of its owner or the sale of the firm? Current guidance properly tells recipients to look at the changed firm and determine whether the firm should be decertified and initiate a section 26.87 proceeding if appropriate. In this situation, the recipient has the burden of proof to demonstrate that the firm should lose its eligibility.

Meanwhile, the firm continues to be certified and can obtain new contracts as a DBE. Many people in the certification community have urged, to the contrary, that the firm should lose its eligibility when a dramatic change of this kind occurs, and should have to reapply for certification as if it were a new firm. Meanwhile, it would not be eligible for new contracts as a DBE.

The proposed section 26.88 seeks a middle ground between these approaches, providing that a firm's certification would be suspended in some situations (i.e., death or incarceration of an owner whose participation is needed to meet ownership and control requirements) and could be suspended in other situations (e.g., sale of the firm to a new owner), while a recipient determines whether the firm's certification should be continued. When a firm's certification is suspended, it cannot receive new contracts as a DBE. However, its participation on a contract it has already received would continue to count toward DBE goals.

Under the proposal, if an owner necessary to the firm's eligibility dies or is incarcerated, the recipient must suspend the firm's eligibility. By necessary to the firm's eligibility, we mean that without that owner's participation, the firm would not meet the requirement of 51 percent ownership by disadvantaged individuals or the requirement that disadvantaged owners control the firm. If a single disadvantaged individual is the 51 percent owner, then it is obvious that the suspension would take effect. However, if there were three disadvantaged owners who each owned 30 percent of the business, and one of them died, then the other two, between them, would still own more than 51 percent of the business, and the recipient would not be required to suspend the firm's certification. Of course, if the owner who died was essential to control of the business by disadvantaged individuals, it would be appropriate to suspend the firm.

In other situations, recipients would have the discretion to suspend a firm's eligibility. For example, if a firm was sold, and there was a significant question about whether the new disadvantaged owners controlled the firm, or if the firm failed to file the required notice following a material change in its circumstances, or an affidavit of no change, the recipient could choose to suspend the firm's eligibility. (This could prove a useful incentive for firms to file these documents in a timely fashion). After a suspension, the firm would provide information relevant to its eligibility to the recipient. Within 30 days of getting that information, the recipient would have to lift the suspension or commence a decertification proceeding under section 26.87. The suspension would continue in effect during the proceeding. If the firm is not decertified as the result of the proceeding, the suspension is lifted and the firm returned to active status as a DBE.

§ 26.89 What is the process for certification appeals to the Department of Transportation?

The Department is not proposing to change the process for firms wishing to appeal a recipient's determination concerning its eligibility. However, we propose amending this section to clarify what type of information should be contained in the appeal filed with DOCR. Specifically, we propose in § 26.89(c) that the appellant provide a ''full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this part the recipient did not properly apply.'' This addition will aid the Department in reviewing the recipient's actions. Another change we propose that will also aid both recipients and the Department in the appeal process is clarification of how the regulation defines ''days.'' Under the proposed definition in section 26.5, days would mean calendar days; and in computing any period of time described in the regulation, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal Holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal Holiday.

Other Provisions

§ 26.1 What are the objectives of this part?

The NPRM would add a new paragraph to this section, saying that a purpose of the rule is to promote the use of all types of DBEs. This language is intended to emphasize that the DBE program is not just about construction. Other types of work, including, but not limited to, professional services, supplies etc., are also appropriate for DBE participation.

§ 26.5 Definitions

In the Department's experience, recipients need clarity on terms already used in this provision, and we propose adding eight new definitions in this section for the following words or phrases: ''Assets;'' ''business, business concern, or business enterprise;'' ''contingent liability;'' ''days;'' ''immediate family member;'' ''liabilities;'' ''non-disadvantaged individual;'' ''principal place of business;'' and ''transit vehicle manufacturer (TVM).'' With respect to the TVM definition, the Department seeks comment on whether producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called ''cutaway'' vehicles, vans customized for service to people with disabilities) should be defined as TVMs for DBE program purposes.

Additionally, we propose to modify the existing definition of a ''socially and economically disadvantaged individual'' to align with SBA principles. Most importantly, the definition specifically states that being born in a country does not, by itself, suffice to make the birth country and individual's country of origin for purposes of being included within a designated group. For example, a child born of Norwegian parents in Chile would not, based on that fact alone, be regarded as ''Hispanic'' under the definition. Minor technical changes to references within the existing definitions are also proposed.

We also note that the proposed definition of ''immediate family member'' would include a wider group of relatives, and we seek comment on the scope of that proposed change (e.g., Is it appropriate to include grandparents? Should grandchildren also be included?). The effect of the change is to broaden the impact of provisions of the rule that call for a higher burden of proof concerning ownership and control when transfers of interests in a company are made to family members.

The NPRM would amend the definition of ''Native Americans'' to be consistent with a February 2011 change in SBA's definition of the term. The term ''Alaska native'' would replace ''Eskimos and Aleuts,'' and the phrase ''enrolled members of a federally or state-recognized Indian tribe'' would replace ''American Indians.''

§ 26.11 What records do recipients keep and report?

The NPRM proposes two new provisions, both related to certification. The first is a record retention requirement for certification-related records. These are the kind of records that recipients and UCPs normally keep, but we have heard concerns that some recipients may be discarding records that may still be relevant for certification review purposes.

Second, to implement a longstanding provision in the DBE authorization legislation, the Department proposes adding a new reporting requirement. Under section 1101(b)(4)9B) of MAP–21, states are required to notify the Secretary, in writing, of the percentage of the small business concerns that are controlled by (i) Women; (ii) socially and economically disadvantaged individuals (other than women); and (iii) individuals who are women and are otherwise socially and economically disadvantaged individuals. To carry out this requirement, UCPs would go through their statewide Directories and count the number of firms controlled, respectively, by white women, minority or other men, and minority women. They would then convert the numbers to percentages and send the result to the Departmental Office of Civil Rights, with which they already have a working relationship in certification appeals matters. We realize that some firms may be controlled by persons in more than one of these three categories. In this case, we propose that UCPs include a firm in the category applicable to the owner with the largest stake in the firm who is also involved in controlling the firm.

We note that the commitments and achievements reporting form already captures information broken down by gender and ethnicity concerning contracts and contracting dollars going to DBEs. This is not the same thing as the report on the percentages of certified firms, but we seek comment on whether it would be easier to include the percentage information on this reporting form in some fashion rather than having a separate report submitted.

§ 26.21 Who must have a DBE program?

It appears that there is some confusion in the recipient community as to precisely who must have a DBE program with the FTA and FAA. For example, section 26.21 requires all entities that receive FTA federally assisted funds over $250,000 used in contracts (except for transit vehicle purchases) in a federal fiscal year for planning, capital, and/or operating assistance purposes to have a DBE program. However, despite this clear mandate, many of FTA's recipients still mistakenly believe only individual prime contracts valued above $250,000 are eligible for the DBE program, and thus improperly exclude prime contracts valued below $250,000 from both their determination as to whether they are required to submit a goal and from actual goals submitted to FTA. The Department has long maintained the $250,000 threshold applies to contracts in the aggregate, meaning all DBE program-eligible contracts, regardless of value, must be considered for both threshold and goal setting purposes. For example, if a recipient were to receive several small grants within a fiscal year (e.g. $1000 to $200,000) for planning, capital, or operating assistance) their combined value, if over $250,000, would trigger the requirement that the entity have a DBE program. The same point applies with respect to FAA-assisted contracts. The proposed amendment modifies the language to reflect this long held position, and should resolve any lingering misconceptions with regard to the issue.

Section 26.21(a)(1), as currently written, requires all FHWA recipients receiving funds authorized by a statute to which this part applies to have a DBE program. ''Recipient,'' as defined in section 26.5, is ''any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient. * * *'' FHWA, however, expects that each subrecipient will operate under its direct recipient's approved DBE program. Therefore, FHWA will not allow subrecipients to operate under their own DBE programs, separate from the program of the direct recipient. If an entity that is an FHWA subrecipient is also a direct recipient of FAA or FTA funds, then the entity would have its own DBE program and goal for its FAA- or FTA-assisted contracts, while operating under the State DOT's goal for FHWA-assisted contracts. Where funds are comingled, recipients should consult with the DOT agencies involved to determine how to proceed.

§ 26.45 How do recipients set overall goals?

Establishing the overall goal is a critical component of administering the DBE program. We propose several changes to the rules governing overall goal setting to ensure that recipients employ sound goal setting practices consistent with the remedial purpose of the program.

There are two analytical steps to establishing an overall goal. The first step is to determine the relative availability of DBEs in the recipient's transportation contracting market. We propose to codify the elements of a bidders list that must be documented and supported when this approach is used to establish DBE availability. Those elements include capturing data on successful and unsuccessful firms (DBEs and non-DBEs, prime contractors and subcontractors) that have bid on federally assisted contracts during the past three-year period. We also propose to disallow the use of prequalified contractors lists to establish availability and seek your views on whether this prohibition should be extended to the use of bidders list and other such lists (registered subcontractors lists, plan holders list, etc.) relied upon exclusively as a source to identify ready, willing, and able firms.

We know from numerous disparity studies that have been conducted across the nation that discriminatory practices affecting minority and women owned small businesses continue to create barriers to accessing capital and bonding that in turn affect their ability to form, grow, and compete with other firms for contracting opportunities. Looking only to bidders lists, lists of prequalified contractors, or similar lists to determine availability may serve only to perpetuate the effects of discrimination rather than attempt to remedy those effects. Given this concern about the use of bidders lists in goal-setting, and what we understand to be difficulties that recipients have had in collecting all the bidders list information called for in section 26.11, we also seek comment on whether the bidders list approach to goal-setting should be deleted from the rule.

The focus of the second step in the overall goal setting process is to consider other available evidence of discrimination or its effects that may impact availability, and based on that evidence consider making an appropriate adjustment to set an overall goal that reflects the level of participation one would expect in the absence of discrimination. We have seen many recipients routinely adjust downward the step one availability figure based on past DBE utilization, without regard to whether an adjustment is warranted by the evidence. Under the rules, past DBE utilization is defined as a proxy for DBE capacity. However, we know that in many instances, low levels of past DBE utilization does not represent DBE capacity in a given contracting market and may simply reflect the continuing effects of discrimination, the failure of a recipient to implement a robust program, or the existence of circumstances similar to those mentioned in Departmental guidance (e.g., the effect of past or current noncompliance with DBE program requirements). Adjusting availability downward under these or similar circumstances would not be appropriate or required. Consequently, we propose to expressly state in the rule that step two adjustments are not appropriate

unless clearly warranted by the evidence.

In reviewing overall goal submissions made by recipients, operating administrations currently are authorized to adjust the overall goal or require the recipient to do so if in the opinion of the operating administration the overall goal has not been correctly calculated or the method for calculating the goal is inadequate. In making that assessment, we propose to clarify that the operating administrations are to be guided by the goal setting principles and best practices announced by the Department pursuant to section 26.9. While the ''Tips on Goal Setting'' posted on the OSDBU Web site offer recipients a lot of flexibility in developing a methodology, the Tips also represent the Department's view of practices recipients should follow to produce a sound methodology that in turn will likely produce a sound overall goal that is required by the rules. Recipients are not at liberty to employ practices that serve no purpose other than to drive down the overall goal without risking disapproval by the appropriate operating administration.

We are also proposing a clarifying change to 26.45(e)(3) concerning project goals. The language would note that a project goal may be a percentage of the value of the entire project as determined by the recipient or a percentage of the federal share.

We propose to modify the public participation requirements for goal setting to strengthen the consultation component, to eliminate the public comment period associated with publication of the proposed goal, and to require posting proposed goals on recipient Web sites—a less costly alternative to the current requirement for publication in general circulation and other media. These changes are designed to reduce the administrative burden and expense associated with requirements that have added little, if any, value to the goal setting process. We recognize the importance of affording those who are likely to be affected by the proposed goal (i.e., stakeholders) an opportunity to present their views, data, or analysis to recipients in the development of an appropriate goal setting methodology. For that reason, we believe consultation, to be meaningful, should involve a dialogue between a recipient and stakeholders in its contracting market. Based on our experience, the most meaningful participation by the public in goal setting occurs during the consultation phase when genuine efforts are made to engage interested individuals or groups in the process. Few comments are received from the public during the 45 day comment periods that have not been provided during consultation. This change also would be consistent with the requirement for stakeholder involvement currently applicable to the DBE concessions program in Part 23.

§ 26.49 How are overall goals established for transit vehicle manufacturers?

The Department has been concerned for some time about confusion among program participants concerning the implementation of the transit vehicle manufacturer (TVM) provisions of Part 26. Because a large portion of FTA's federal financial assistance is used by its recipients for transit vehicle purchases, the Department's intent was to require similar DBE goal setting provisions to their operations, and under the current rule, such entities were required to submit their goal setting methodologies to FTA and report to FTA their awards to women and minority owned firms. In practice, however, the Department has seen irregularities in how TVMs perform in submitting goal setting methodologies, and how TVMs report DBE awards and achievements. As a result, the Department believes additional clarification is needed to ensure meaningful application of the DBE rule's requirements within the transit vehicle manufacturing industry. The proposed rule changes are intended to clarify TVM requirements by providing additional information as to how the Department expects TVMs to determine their DBE goals, when and in what instances TVMs must report DBE awards and achievements data, and by specifying which portions of the DBE regulations apply to TVMs.

With respect to goal setting, the proposed rule seeks to clarify what must—and what must not—be included in a transit vehicle manufacturer's goal methodology submission. Specifically, it codifies the Department's long-held position that for goal setting purposes, transit vehicle manufacturers may not selectively choose which contracting opportunities will and will not be included. Rather, when setting a DBE goal, all contracting opportunities made available to non-DBEs must also be made available to DBEs, and thus must be included in the submitted methodology. It is important to note that this requirement is not intended to ''solicit'' DBE participation for any specific contracting opportunity or task, nor is it intended to dictate contractual relationships between transit vehicle manufacturers and any specific type of firm. Instead, the sole purpose is to ''level the playing field'' and ensure DBE firms have the opportunity to fairly compete for all contracts non-DBEs have access to. To provide appropriate flexibility in the implementation of this provision, we believe that this clarification must also be accompanied by a strong statement, to FTA recipients in particular, that overly prescriptive contract specifications on transit vehicle procurements that in effect eliminate opportunities for DBEs in the manufacture of transit vehicles is counter to the intent of the DBE Program and unduly restricts competition which is prohibited by 49 U.S.C. 5325(h). Violation of rules that support competition in the marketplace may result in the loss of FTA financial assistance.

In addition to clarifying which opportunities must be included, the proposed rule also contemplates which opportunities must not be included in the goal setting methodology. While the provision pertaining to work and materials performed outside the jurisdiction of the United States remains intact, the Department proposes the current practice of including the entire Federal share of any given vehicle procurement be amended to include only the portion of the Federal share available via contracts to outside firms. Because such a large portion of work required when manufacturing and assembling a transit vehicle is performed ''in house,'' the Department does not believe it is appropriate to use the entire Federal share of a transit vehicle contract as the base figure for the DBE goal, as it skews the final goal relative to the contracting opportunities actually available. Instead, the Department proposes that the base figure be derived from the total value of contracts available to firms outside of the manufacturer itself. For example, if a particular transit vehicle manufacturer is awarded a $10 million contract to manufacture buses, and the transit vehicle manufacturer performs 70% of the work with its own forces while contracting out the remaining 30%, then the amount from which the base figure and goal should be derived would be $3 million. Since work performed ''in house'' is not truly a contracting opportunity available to either DBEs or non-DBEs, the Department believes this approach will lead to more accurate and responsible overall DBE goals, improved overall implementation of the DBE program by transit vehicle manufacturers and simpler, better targeted oversight by FTA. While proposing this approach, however, the Department also seeks comment on whether there should be regulatory

provisions designed to encourage TVMs to make more parts of their manufacturing processes available to DBEs and other small businesses. If so, what should they be?

The proposed rule also clarifies the Department's stance on when transit vehicle manufacturers must report DBE information to FTA. Because submission of a DBE goal to FTA does not guarantee a transit vehicle manufacturer will be awarded a contract, confusion exists as to when DBE reports should be submitted. The Department believes the best approach is to require transit vehicle manufacturers to continuously report their contracting activity in the Uniform Report of DBE Awards/Commitments and Payments, since the administrative burden to submit reports with no activity is negligible in comparison to making a yearly assessment of those transit vehicle manufacturers who are still performing on contracts underway.

Finally, the proposed rule seeks to reiterate and clarify the existing requirement that TVMs are subject to all of the applicable provisions of the DBE regulation and responsible for their implementation. It has been the Department's experience that in many cases, compliance with the DBE regulation has been reduced to the submission of a DBE goal and both of the semi-annual DBE reports each year. This was never the Department's intention, and the proposed rule seeks to correct this issue by reaffirming that transit vehicle manufacturers are equally as responsible for implementing the other areas of the regulation as other DOT recipients. However, recognizing that transit vehicle manufacturers do not participate in the DBE certification process, the Department has exempted them from those portions of the rule, with one notable exception: In order to obtain credit for DBE participation, the manufacturer must still ensure that the DBE firm is certified in the state where it performs the work. In addition the Department also proposes that the other post-award requirements of the DBE regulation need not be followed or reported on in those years where a transit vehicle manufacturer is not either awarded or performing on a transit vehicle procurement. The Department believes these proposed changes will both strengthen the oversight functions for those portions of the rule applicable to transit vehicle manufacturers, while exempting manufacturers from those portions of the regulation that do not specifically apply to their businesses.

§ 26.51 What means do recipients use to meet overall goals?

The current regulation 26.51(a) states that race-neutral DBE participation can include when a DBE wins a subcontract from a prime contractor that did not consider DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts). We propose removing this as an example of race-neutral DBE participation since it is impossible for recipients to determine if a prime uses a strict low bid system, and, more importantly, it conflicts with Appendix A, which states prime should not reject a DBE quote over a non-DBE quote if the price difference is not unreasonable.

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

When a recipient sets a goal for DBE participation on a DOT-assisted contract, it must award the contract only to a bidder/offeror that makes good faith efforts to meet it. Bidders can meet the goal in one of two ways. They can obtain commitments for enough DBE participation to meet the goal. If they do not meet the goal, they can also document that they have made good faith efforts to do so. The existing provisions of § 26.53 and Appendix A discuss the kinds of good faith efforts bidders are expected to make, with the Department taking the approach that a showing of adequate good faith efforts in a particular procurement is necessarily a fact-specific judgment recipients must make. The unique circumstances of procurements vary widely and the Appendix spells out factors recipients should take into account when assessing the behavior of bidders in making a good faith effort showing. We do not believe that a template or checklist approach, or some quantitative formula, could ever adequately respond to the circumstances that recipients have to evaluate in determining whether a bidder has made good faith efforts to meet a goal.

The current rule requires bidders/offerors to submit: The names and addresses of DBE firms that will participate on the contract; a description of the work that each DBE will perform; the proposed dollar amount for each DBE firm; written documentation of the bidder's commitment to use the DBE; and the DBE's confirmation that it is participating. We believe the information reporting requirements can be strengthened by requiring that bidders, in addition to these submissions, provide the recipient with information showing that each DBE signed up by the bidder is certified in the NAICS code(s) for the work it will be performing. This provision will help to reduce the possibility that bidders, in trying to obtain a contract, could list firms that cannot qualify for DBE credit in the work area involved in the contract. This information would have to be submitted with the bidder's initial good faith effort submission. To help implement the NAICS code provision, we recommend that recipients make available (e.g., on their Web sites) the most important and frequently-used NAICS codes relevant to the recipients' operations.

The current rule distinguishes between situations in which contracts are let on the basis of ''responsiveness'' or ''responsibility.'' In the former case, all DBE participation information must be submitted at the time of bid submission. In the latter case, as long as a bidder promised to meet the goal, the bidder could identify DBEs after the bid submission but before the recipient commits itself to using a particular contractor. The Department has noticed an unfortunate trend in which, in procurements that otherwise use a traditional low-bid procurement mechanism, recipients sometimes give the apparent successful bidder a period of several days or weeks after bid opening to submit DBE information, sometimes justifying the practice by labeling the action as a ''responsibility'' procurement. This has the potential to facilitate bid-shopping or other questionable activities by prime contractors. The section's ''responsibility/responsiveness'' terminology has also caused some degree of confusion.

To clarify this situation, the NPRM proposes eliminating the ''responsiveness/responsibility'' distinction. The proposed language would simply say that, with one exception, competitors for a contract having a DBE contract goal would have to submit all information about DBEs that have been engaged for the project with their original submission. There could be no additional grace period after this point during which competitors could subsequently submit this information. The exception to this requirement would be in a negotiated procurement, where the initial submission would contain a binding commitment to meet the goal or document good faith efforts, and specific DBE information could be submitted in the same time frame as price and other terms of the negotiated contract were made final.

If a bidder/offeror does not meet the contract goal on a contract, it must, in order to remain eligible for contract award, submit documentation showing that it made sufficient good faith efforts to meet the contract goal. As noted above, Appendix A describes the kind of information that recipients would use to determine whether a bidder/offeror has made sufficient good faith efforts. In addition, this NPRM proposes that, as part of a good faith efforts showing, a bidder/offeror would have to provide copies of each DBE and non-DBE subcontractor quote it had received, in situations where it picked a non-DBE firm to do work that a DBE had sought. This information will help the recipient determine whether there is validity to any claims by a bidder/offer that a DBE was rejected because its quote was unreasonably high.

The NPRM would give recipients two options with respect to the timing of the provision of good faith efforts documentation from bidders/offers who do not meet the contract goal. First, recipients could require that all bidders/offerors who do not meet the contract goal submit good faith efforts documentation with their original bids/offers. Bidders/offerors have to amass a great deal of information to compete for a contract (e.g., with respect to price, materials, schedules, etc.). DBE-related information is no different and no less an integral part of the bidding process. DBE information is not some separate, foreign intrusion into the procurement process that needs to be handled at a different time from anything else that determines who wins a contract. Consequently, we believe that recipients can justifiably seek good faith efforts information at the same time they receive everything else concerning the competition for a contract.

However, we recognize that some recipients may wish to reduce administrative burdens on unsuccessful bidders/offerors. Consequently, the second option the proposed rule offers is for recipients to require good faith efforts documentation only from an apparent successful bidder/offeror that does not meet the contract goal. In this option, no one would be required to submit good faith efforts documentation with their original submissions. The apparent successful bidder/offer would have one day after the recipient notified it to submit the documentation. The documentation would have to relate to pre-bid/offer submission efforts; no post-bid/offer submission efforts would be acceptable. The Department seeks comment on whether, in this option, one day is an appropriate time frame, or whether a longer period (e.g., three days) would be acceptable.

A related provision, added to Appendix A, seeks to remedy a practice involving the awarding of contracts to offerors who pledge to name DBEs after they are awarded the contract, but do not actually provide specific DBE information at the time required. This language explicitly states that a promise by the prime contractor bidder to include DBEs after the award is not to be considered as part of a good faith efforts evaluation.

We also propose to add a new paragraph (f)(1)(ii) that would create additional safeguards for DBEs. It requires a recipient to include in each prime contract a provision stating that, as a condition of the award, the contractor must use those DBEs listed to perform the specific work items or supply the materials as committed and that the contractor is not entitled to any payment for work or materials performed by its own or any other forces if the work or supplies were committed to a DBE, unless it receives prior written consent of the recipient for a replacement of the DBE for good cause.

In the event that it is necessary to replace a listed DBE, proposed paragraph (g) specifies good faith efforts that a prime contractor would have to make to find DBE participation in place of the original DBE. These include such things as (1) A statement of efforts made to negotiate with DBEs for specific work or supplies, including the names, addresses, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed or the materials supplied; and (4) an explanation of why an agreement between the prime contractor and a DBE was not reached. The Department would expect prime contractors to look throughout the contract or project to find opportunities for DBE participation in this situation. This effort would not be limited to the same type of work the original DBE would have performed, but would extend to other types of work as well, including work the prime contractor may originally have planned to self-perform. The prime contractor would have to submit the documentation within 7 days of the recipient's agreement to permit the original DBE to be replaced, and the recipient would provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Under a new paragraph (h), recipients would be required to include in each prime contract a provision stating that failure by the contractor to carry out the requirements of this regulation, or meet its corrective plan as described above, is a material breach of the contract, and may result in the termination of the contract, use of the remedies set forth in proposed paragraph (i), and other remedies available to the recipient under law. The proposed remedies include provisions regarding (i) The withholding of monthly progress payments; (ii) declaring the contractor in default and terminating the contract; (iii) assessing sanctions in the amount of the difference in the DBE contract committal and the actual payments made to each certified DBEs; (iv) liquidated damages; and/or (v) disqualifying the contractor from future bidding as non-responsible.

In an effort to enhance the recipient's ability to review prime and subcontractor participation on DOT-assisted contracts, we are proposing in a new paragraph (k) to require the prime contractor to provide all subcontracts for all DBEs participating on a contract (including first and lower tier subcontractors). Lastly, the good faith efforts provisions of the current rule apply when a procurement involves a race-conscious DBE contract goal. However, DBEs also participate, as a race-neutral matter, on contracts that do not have DBE contract goals. The Department seeks comment on whether some of the provisions of this rule (e.g., concerning termination of DBEs and good faith efforts to replace DBEs that are dropped from a project) should apply to DBEs on contracts that did not have a contract goal.

§ 26.55 How is DBE participation counted toward goals?

We propose to modify the factors in determining whether a DBE trucking company is performing a commercially useful function to include the ability to count 100% of a DBE's trucking services when it uses its own employees as drivers, but leases trucks from a non-DBE truck leasing company. This change would allow DBE haulers to lease trucks from non-DBE leasing companies in instances in which they employ sufficient drivers yet lack sufficient trucks to fulfill their contractual obligations. This change is designed to allow DBEs the same ability as non-DBEs to use their own drivers and supplement their fleets with leased trucks without sacrificing any loss of DBE credit due to the fact that the trucks may be leased from a non-DBE leasing company. Credit would not be given,

however, in instances in which the DBE leases trucks from the prime contractor. The regulations pertaining to counting DBE trucking in which a DBE subcontracts with a non-DBE owner-operator or leases trucks *and* drivers from a non-DBE would remain unchanged. We also note that there could be situations in which close relationships between DBEs and non-DBE companies from which they lease trucks (e.g., a non-DBE mentor company) or difficulties in documentation of arms-length lease relationships (e.g., no proof of payment, assertions of payment in kind) could raise certification or fraud issues. The proposed amendment would change only counting rules; it would not immunize companies involved from scrutiny of potentially improper relationships.

The NPRM would also add language emphasizing that counting decisions concerning whether a firm's participation is best understood as a regular dealer or as a transaction expediter must be made on a contract-by-contract basis, not on a generic basis.

On December 9, 2011, the Department issued a new guidance Question and Answer (Q&A) to clarify the counting rules with respect to credit for suppliers, discussing the application of the ''regular dealer'' and ''transaction expediter/broker'' concepts. The Department seeks comment on whether any provisions of the Q&A should be made part of the rule itself. More broadly, the Department wants to open a discussion of the regular dealer concept itself. As defined in the rule, a ''regular dealer'' occupies something like the traditional ''middleman'' role in commerce. Conversations with a variety of firms and state and local agencies have raised the question of whether changes in the way business is conducted has made the middleman role itself somewhat obsolete in the kinds of work (e.g., construction, professional services) most frequently involved in the DBE program. We seek comment on this question and on how, if at all, changes in the way business is conducted should result in changes in the way DBE credit is counted in supply situations.

The Department's key principle in counting DBE participation in any situation is to ensure that only work the DBE does itself, only the value that the DBE adds to the transaction, should count. When a DBE is involved in supplying goods manufactured by a non-DBE, and the DBE does not play a traditional regular dealer/middleman role, what is the appropriate measure of the value it adds to the transaction? Is it ever more than the fees or commissions the DBE gets? If so, what is the rationale for counting more than this (e.g., some percentage of the product that is provided to the ultimate user)?

One policy consideration that has influenced the Department's thinking over the years is that allowing too-generous credit for supplies provided by a DBE middleman or transaction expediter would work to the disadvantage of DBEs who are contractors in construction or other fields. That is, if a prime contractor can get all or most of the DBE credit it needs to meet a goal from buying steel or petroleum products or other items through a DBE middleman, then the prime contractor's incentive to use other DBE contractors on a project is diminished. The Department seeks comment on how this policy consideration interacts with the way the counting provisions of the rule work in practice.

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

One of the concerns the Department has with the implementation of the program is that certifiers and other state and local program officials can be subject to pressures to take actions inconsistent with the intent and language of the Department's rules. It is crucial that recipients' personnel objectively discharge their professional responsibilities under this part. Objectivity includes being independent in fact and appearance when making certification decisions, maintaining an attitude of impartiality, and being free of conflicts of interest. We believe that the ethical administration of the program means that no public official at any level of state or local government should make, participate in making or in any way attempt to use their official position to influence a certification or other program decision. No employee, officer or agent of the recipient should participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Recipients and their staffs are, of course, obligated to follow their jurisdiction's written codes of ethics. Beyond that, the Department seeks comment on whether Part 26 should be amended (or guidance issued) to add provisions concerning ethics and conflicts of interest that could perhaps play a constructive role in empowering DBE officials to resist inappropriate pressures. Would such provisions be effectual? Could the Department effectively develop provisions that provided appropriate guidance but did not become overly detailed? The Department welcomes suggestions about this subject.

Appendix A—Good Faith Efforts

Appendix A provides guidance for recipients that establish a contract goal for DBE participation on a DOT-assisted contract. The Appendix is mentioned in the regulation text § 26.53, which the Department is proposing (as described above) to revise. The Appendix lists the specific types of actions recipients should consider as part of bidders' good faith efforts to obtain DBE participation. This list was never intended to be a mandatory checklist nor to be exclusive or exhaustive. We clearly indicate that other factors or types of efforts may be relevant in appropriate cases. There has been no revision to the stated good faith efforts examples specified in the Appendix since the original issuance of the rule, but over time we have learned of several possible improvements that we hope to make now. These significant examples we propose to add are in the areas of market research (item A) and establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation (item B). We further propose adding language specifying that the rejection of the DBE simply because its quotation for the work was not the lowest received is not a practice considered to be good faith effort. We propose to add language saying that ''determinations should not be made using quantitative formulas.'' There is an understandable desire to permit good faith efforts decisions to be made on a neat, bright-line basis (e.g., if a prime contractor has contacted a given number or given percentage of DBEs, it has made sufficient good faith efforts). To accomplish their purpose, however, good faith efforts decisions must be a judgment based on the entire set of factors concerning a particular contracting action, and cannot be reduced to a formula or checklist without distorting the process.

When a DBE must be replaced on a contract, the prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces is not a sound basis for rejecting a prospective replacement DBE's reasonable quote. Section V of the Appendix addresses

various techniques recipients employ in determining whether a bidder has made good faith efforts. We propose adding language that recommends that recipients scrutinize the documented efforts and at a minimum, review the performance of other bidders in meeting the contract goal (e.g., to see if the success of other bidders in meeting a goal suggests that good faith efforts could have resulted in the bidder meeting the goal). We propose mirroring language we have added in § 26.53 revisions that recipients require contractors to submit all subcontractor quotes in order to review whether DBE prices were substantially higher. Recipients would also contact the DBEs listed on a contractor's solicitation to inquire as to whether they were, in fact, contacted by the prime. The added language also states that pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

Regulatory Analyses and Notices

Executive Orders 12866 and 13563 (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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order. It does not create significant cost burdens, does not affect the economy adversely, does not interfere or cause a serious inconsistency with any action or plan of another agency, does not materially alter the impact of entitlements, grants, user fees or loan programs; and does not raise novel legal or policy issues. The rule is essentially a streamlining of the provisions for implementing an existing program, clarifying existing provisions and improving existing forms. To the extent that clearer certification requirements and improved documentation can forestall DBE fraud, the rule will result in significant savings to state and local governments. This NPRM does not contain significant policy-level initiatives, but rather focuses on administrative changes to improve program implementation.

Executive Order 12372 (Intergovernmental Review)

The NPRM is a product of a process, going back to 2007, of stakeholder meetings and written comment that generated significant input from state and local officials and agencies involved with the DBE program in transit, highway, and airport programs.

Regulatory Flexibility Act

The underlying DBE rule does deal with small entities: all DBEs are, by definition, small businesses. Also, some FAA and FTA recipients that implement the program are small entities. However, the changes proposed to the rule are primarily technical modifications to existing requirements (e.g., improved forms, refinements of certification provisions) that will have little to no economic impact on program participants. Therefore, the proposed changes will not create significant economic effects on anyone. In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. As noted above, there is no substantial compliance cost imposed on state and local agencies, who will continue to implement the underlying program with administrative improvements proposed in the rule. The proposed rule does not involve preemption of state law. Consequently, we have analyzed this proposed rule under the Order and have determined that it does not have implications for federalism.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT is submitting Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be an opportunity to comment. Organizations and individuals desiring to submit comments on the collection of information should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy their comments to the docket for this rulemaking at regulations.gov. Given the time frames for DOT and OMB consideration of comments, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST intends to obtain current OMB control numbers for the new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced either in the final rule or by separate notice in the **Federal Register**.

The Department invited interested persons to submit comments on any aspect of these ICRs, including: (1) Whether the proposed collection is necessary for OST's performance; (2) the accuracy of the estimated burdens; (3) ways for OST to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

For each of these information collections, the title, a description of the entity to which it applies, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below.

1. Application Form

Based on discussions with DBEs, it is estimated that the total burden hours per applicant to complete its DBE or ACDBE certification application with supporting documentation to be approximately 8 hours. In addition, new applicants will have to submit a personal net worth (PNW) statement (see below).

The number of new applications received each year by Unified Certification Program members is difficult to estimate. There is no central repository for DBE certification applications and we predict that the frequency of submissions at times vary according to construction season (high applications when the season is over), the contracting opportunities available in the marketplace, and the number of new transportation related business formations or expansions. To get some estimate however, the Department contacted recipients in during the process of this NPRM. The agencies we contacted reported receiving between 1–2 per month, 5–10 per month, or on the high end 80–100. There are likely several reasons for the variance. Jurisdictions that are geographically contiguous to other states (such as Maryland) and/or have a high DBE applicant pool may receive a higher number whereas jurisdictions in remote areas of the country with smaller numbers of firms may have lower

applicant requests for DBE certification. These rough numbers likely do not include requests for expansion of work categories from existing firms that are already certified.

Frequency: Once during initial DBE or ACDBE certification.

Estimated Average Burden per Response: 8 hours.

Estimated Total Annual Burden Hours: 72–76 thousand hours per year.

2. PNW Form

A small business seeking to participate in the DBE and ACDBE programs must be owned and controlled by a socially and economically disadvantaged individual. When a recipient determines that an individual's net worth exceeds $1.32 million, the individual's presumption of economic disadvantage is said to have been conclusively rebutted. In order to make this determination, the current rule requires recipients to obtain a signed and notarized statement of personal net worth from all persons who claim to own and control a firm applying for DBE or ACDBE certification and whose ownership and control are relied upon for the certification. These personal net worth statements must be accompanied by appropriate supporting documentation (e.g., tax returns). The form proposed in this rule would replace use of an SBA form suggested in current regulations.

Based on discussion with DBE firms, we estimate that compiling information for and filling out this form would take approximately 10 hours.

The number of respondents is significantly higher than the number of applications received due to annual submissions of the form by owners of DBE or ACDBE certified firms.

Frequency: Once during initial DBE certification and each year thereafter during annual update process. For the DBE/ACDBE programs, information regarding the assets and liabilities of individual owners is necessary for recipients of Federal Transit Administration, Federal Aviation Administration, and Federal Highway Administration, to make responsible decisions concerning an applicant's economic disadvantage under the rule. All persons who claim to own and control a firm applying for DBE or ACDBE certification and whose ownership and control are relied upon for the certification will complete the form. Once a firm is certified as a DBE or ACDBE, these same owners will complete the form each year.

Estimated Average Burden per Response: 8 hours for the initial statement; 4 hours for future updates.

Number of Respondents: 9000–9500 applicants each year. Assuming approximately 30,000 certified firms nationally, there would be that number of updates annually.

Estimated Burden: 72–76 thousand hours per year for applications; 120,000 hours for annual updates. Total estimated burden would be 192–196 thousand hours per year.

3. Material With Annual Affidavits of No Change

Each year, a certified firm must submit an affidavit of no change. In addition to an updated PNW statement (see above), the affidavit must be accompanied by (1) A record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member, or to a trust any beneficiary of which is an immediate family member, within two years of the date of the annual review; (2) a record of all payments, compensation, and distributions (including loans, advances, salaries and dividends) made by the DBE firm to each of its owners, officers or directors, or to any person or entity affiliated with such individuals; and (3) the owner and the firm's (including affiliates) most recent completed IRS tax return, IRS Form 4506 (Request for Copy or Transcript of Tax Return). Collection and submission of these items during the annual affidavit is estimated to take approximately 1.5 hours (realizing that not all firms will have to submit items (1) and (2), and that item 3 will already have been prepared for IRS purposes.

Respondents: The approximately 30,000 certified DBE firms.

Burden: Approximately 45, 000 hours per year.

4. Reporting Requirement for Percentages of DBEs in Various Categories

The NPRM would implement a statutory requirement calling on UCPs to report the percentages of white women, minority men, and minority women who control DBE firms. To carry out this requirement, the 52 UCPs would read their existing Directories, noting which firms fell into each of these three categories. The UCPs would then calculate the percentages and email the results off to the Departmental Office of Civil Rights. It would take each UCP an estimated three hours to comb through their Directories, and another three minutes to operate their calculators to do the percentages and send an email.

Respondents: 52.

Burden: Approximately 158.5 hours.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil Rights, Government contracts, Grant-programs—transportation; Mass transportation, Minority Businesses, Reporting and record keeping requirements.

Issued this 22nd day of August 2012, at Washington, DC.

Robert S. Rivkin,

General Counsel.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 49 CFR part 26 as follows:

PART 26—[AMENDED]

1. The authority citation for 49 CFR part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.* ; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

2. In § 26.1, redesignate paragraphs (f) and (g) as paragraphs (g) and (h), and add new paragraph (f),to read as follows:

§ 26.1 What are the objectives of this part?

* * * * *

(f) To promote the use of DBEs in all types of Federally-assisted contracts and procurement activities conducted by recipients.

* * * * *

3. Amend § 26.5 by removing the definition ''DOT/SBA Memorandum of Understanding or MOU'' and by adding the following definitions ''Assets'', ''Business, business concern or business enterprise'', ''Contingent Liability'', ''Days'', ''Immediate family member'', ''Liabilities'', ''Principal place of business'', ''Transit vehicle manufacturer (TVM)'', in the proper alphabetical order to read as follows:

§ 26.5 What do the terms used in this part mean?

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of

taxes or use of American products, materials, or labor.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, and mother-in-law.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Principal place of business means the business location where the individuals who manage the applicant's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Transit vehicle manufacturer (TVM) means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale ''off the lot'' are not considered transit vehicle manufacturers.

4. In § 26.5, revise the definitions of ''Primary industry classification'' and ''Socially and economically disadvantaged individual'' to read as follows:

§ 26.5 What do the terms used in this part mean?

* * * * *

Primary industry classification means the most current North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available from the National Technical Information Service, 5301 Shawnee Road, Alexandria, VA, 22312 by calling 1–800–553–6847; TDD: (703) 487–4639, on the Internet at: *http://www.ntis.gov/products/naics.aspx.* or through the U.S. Census Bureau *http://www.census.gov/eos/www/naics/*.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) ''Black Americans,'' which includes persons having origins in any of the Black racial groups of Africa;

(ii) ''Hispanic Americans,'' which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) ''Native Americans,'' which includes persons who are enrolled members of a federally or state recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) ''Asian-Pacific Americans,'' which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) ''Subcontinent Asian Americans,'' which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

* * * * *

5. In § 26.11, add new paragraphs (d) and (e), to read as follows:

§ 26.11 What records do recipients keep and report?

* * * * *

(d) You must maintain all records documenting a firm's compliance with the requirements of this part. At a minimum, you should keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. Such records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement.

(e) Each UCP established pursuant to section 26.81 of this Part must report to the Department of Transportation's Departmental Office of Civil Rights, by May 31 of each year, the percentage of certified DBE firms in its Directory controlled by the following:

(1) women;

(2) socially and economically disadvantaged individuals (other than women); and

(3) individuals who are women and are otherwise socially and economically disadvantaged individuals

§ 26.21 [Amended]

6. In § 26.21 paragraph (a)(1) add the word ''primary'' before FHWA, in paragraph (a)(2) and (a)(3) remove the word ''exceeding'' and add in its place the words ''the cumulative total value of which exceeds.''

7. In § 26.45 revise paragraphs (c) (2), (c) (5); (d)(introductory paragraph), (e)(3), (f)(4) and (g) to read as follows:

§ 26.45. How Do Recipients Set Overall Goals?

* * * * *

(c) * * *

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses (successful and unsuccessful) that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive

a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism to directly capture data on DBE and non-DBE subcontractors that submitted bids or quotes on your DOT-assisted contracts. * * *

(5) *Alternative methods.* Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. Use of a list of prequalified contractors or plan holders is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

* * * * *

(e) * * *

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f) * * *

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to section 26.9.

* * * * *

(g) In establishing an overall goal, you must provide for consultation and publication. This includes:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to section 26.45(f). You must document in your goal submission the consultation process you engaged in. Notwithstanding section 25.45 (f)(4), you may not implement your proposed goal until you have complied with this requirement.

(2) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your Internet Web site any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your Internet Web site.

* * * * *

8. Revise § 26.49 to read as follows:

§ 26.49 How are overall goals established for vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers at the time of solicitation are eligible to bid.

(2) Failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR Part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) FTA recipients must have a mechanism in place to document that only certified manufacturers were allowed to bid.

(4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.

(i) You must consider and include in your base figure all contracting opportunities made available to non-DBE firms; and

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with § 26.45(g) as well as publication of contracting opportunities within a Central Repository of Contracting Opportunities.

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) Transit vehicle manufacturers awarded must comply with the reporting requirements of § 26.11 of this part including the requirement to submit the Uniform Report of Awards/

Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements

(d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

9. Revise § 26.51 paragraph (a) to read as follows:

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

* * * * *

10. In § 26.53, revise paragraph (b), redesignate paragraph (f)(1) as (f)(1)(i), and add a new paragraph (f)(1)(ii) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

(v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.

(3) You must require that the each bidder/offeror present all information required by paragraph (b)(2) of this section at the time its bid/offer is presented (e.g., the time of bid opening, the time of presentation of initial proposals). Provided that, in a negotiated procurement, the offeror may make a contractually binding commitment to meet the goal at the time of the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

(4) If the apparent successful bidder/offeror has not met the contract goal, it must submit documentation of the good faith efforts it made to meet the goal in order to be eligible for contract award. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

(i) You may require all bidders/offerors who do not meet the contract goal to submit this documentation with their original submission; or

(ii) You may allow an apparent successful bidder/offeror who does not meet the contract goal to submit this documentation within one day of your notification that it is the apparent successful bidder/offeror. If you use this approach, you must require that the apparent successful bidder/offeror certify that all evidence of good faith efforts was created or generated before the time of the original bid/offer submission. Efforts to obtain additional DBE participation made after the time of the original submission will not be accepted as evidence of good faith efforts.

* * * * *

(f)(1)(i) * * *

(ii) You must include in each prime contract a provision stating (A) that the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and (B) that, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

* * * * *

11. In § 26.53, revise paragraphs (g) and (h), resdesignate paragraph (i) as paragraph (j), and add new paragraphs (i), and (k) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. These good faith efforts shall be documented by the contractor and at your discretion, you must direct the contractor to provide—

(i) written notification to certified DBEs that their interest is solicited in subcontracting work defaulted by the previous DBE or in subcontracting other items of work in the contract;

(ii) a statement of efforts to negotiate with certified DBEs for specific sub-bids including the names, addresses, and telephone numbers of certified DBEs who were contacted; a description of the information provided to certified DBEs regarding the plans and specifications for portions of the work to be performed; and a statement of why additional agreements with certified DBEs were not reached; and

(iii) documentation demonstrating its attempts to contact the recipient for assistance in locating certified DBEs willing to assume the portion of work or do other work on the contract. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(h) You must include in each prime contract a provision stating that failure by the contractor to carry out the requirements of this Part is a material breach of the contract, and may result in the termination of the contract, the remedies set forth in paragraph (i) of

this section, or other remedies you deem appropriate.

(i) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section in making good faith efforts to meet DBE contract goals and commitments. The remedies shall include provisions regarding (i) the withholding of monthly progress payments; (ii) declaring the contractor in default and terminating the contract; (iii) assessing sanctions in the amount of the difference in the DBE contract committal and the actual payments made to each certified DBEs; (iv) liquidated damages; and/or (v) disqualifying the contractor from future bidding as non-responsible.

(j) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

(k) You must require the contractor to provide a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

12. In § 26.55, revise paragraph (d)(5) and the example to paragraph (d)(5); redesignate paragraph (d)(6) as (d)(7); and add new paragraph (d)(6) and example to paragraph (d)(6); and add a new paragraph (e)(4) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(d) * * *

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

* * * * *

(e) * * *

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

* * * * *

13. In § 26.65, revise paragraph (a), and in paragraph (b), remove ''in excess of $22.41 million'' and add in its place ''in excess of ''$23.98 million'' to read as follows:

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to primary industry classification of the applicant.

* * * * *

14. Revise § 26.67 to read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed $1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the application form provided in Appendix G to this part without change or revision. Where necessary to accurately determine an individual's PNW, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse).

(iii) The PNW statement must include all assets owned by the individual, including any ownership interests in the applicant firm, personal assets, and the value of his or her personal residence. However, when computing an individual's net worth to determine economic disadvantage, you must make the adjustments in paragraph (iv) of this paragraph.

(iv) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the

individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(v) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under section 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

(b) Rebuttal of presumption of disadvantage. (1) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds $1.32 million or demonstrates that the individual is (i) able to accumulate substantial wealth; (ii) has unlimited growth potential; or (iii) has not experienced or had to overcome impediments to obtaining access to financing, markets, and resources, the individual's presumption of economic disadvantage is rebutted. As a certifying agency, you should review the total fair market value of the individual's assets and determine if that level appears to be substantial and indicates an ability to accumulate substantial wealth.

Example to paragraph (b)(1): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than $1.32 million. However, the person's assets (e.g., a very expensive house, a yacht, extensive real or personal property holdings) may lead to a conclusion that he or she is not economically disadvantaged. The recipient can rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than $1.32 million.

(2) In the case of an individual whose economic disadvantage is rebutted because his or her PNW shows a PNW exceeding $1.32 million, you are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(3) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of Sec. 26.87.

(4) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(5) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) *Transfers within two years.*

(1) Except as set forth in paragraph (e)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's eligibility, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

15. In § 26.69, revise paragraphs (a), (c)(1), and (i), add new paragraph (k), to read as follows:

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

* * * * *

(c)(1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

(2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

Examples to paragraph (c):

1. An individual pays $100 to acquire a majority interest in a firm worth $1 million. The individual's contribution to capital would not be viewed as substantial.

2. A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute $100 and $10,000, respectively, to acquire a firm grossing $1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

3. The disadvantaged owner of a DBE applicant firm spends $250 to file articles of incorporation and obtains a $100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

(3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Risks include financial,

legal, and operational obligations. Any terms or practices which give a non-disadvantaged individual or firm a priority or superior right a firm's profits, compared to the disadvantaged owner(s),

(4) Dividends and distributions. The disadvantaged owners must be entitled to receive:

(i) At least 51 percent of the annual distribution of dividends paid on the stock of a corporate applicant concern;

(ii) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(iii) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock they own in the event of dissolution of the corporation.

(5) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

* * * * *

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification. The document must have been signed contemporaneously with the transfer.

(3) You have discretion in cases where marital assets are used to require information concerning the spouse's assets and liabilities. You must make a case-by-case determination of whether the asset transfer was made for reasons other than obtaining certification as a DBE.

* * * * *

(k) You must give particularly close and careful scrutiny to all interests in a business or other assets obtained by a socially and economically disadvantaged owner that resulted from a seller-financed sale of the firm or in cases where a loan or proceeds from a non-financial institution were used by the owner to purchase the interest. The following conditions apply to such a transaction:

(1) Terms and conditions must be comparable to prevailing market conditions offered by commercial lenders for similar type of projects (e.g., in terms of such factors as duration, rate, and fees);

(2) The applicant firm and disadvantaged business owner of the promissory note or loan agreement must provide evidence clearly stating the terms and conditions of the loan, including due date and payment method, interest rate, prepayment, defaults, and collateral;

(3) The note must be a full-recourse note and be personally guaranteed by the socially and economically disadvantaged owner and/or secured by assets outside of the ownership interest or future profits of the applicant firm;

(4) The contributions of capital by the socially and economically disadvantaged owner and any use of collateral by them must be clearly evident from the firm's records and supported by adequate documentation; and

(5) Other than normal loan provisions designed to preserve property pledged as collateral, there must be no conditions, provisions, or practices that have the effect of limiting the socially and economically disadvantaged owner's ability to control the applicant firm.

The firm bears the burden of proving by clear and convincing evidence the transaction meets these criteria.

16. Revise § 26.71 paragraph (e) to read as follows:

§ 26.71 What rules govern determinations concerning control?

* * * * *

(e)(1) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however:

(i) Possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm; or

(ii) Be a former employer or a principal of a former employer of any disadvantaged owner of the applicant or DBE firm, unless it is determined by the recipient that the relationship between the former employer or principal and the disadvantaged individual or applicant concern does not give the former employer actual control or the potential to control the applicant or DBE firm.

(2) The following are examples of situations in which non-disadvantaged individuals or entities may be found to control or have the power to control the applicant or participant firm:

(i) Non-disadvantaged individuals control the Board of Directors of the applicant or Participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-disadvantaged individuals effectively to prevent a quorum or block actions proposed by the disadvantaged individuals.

(ii) A non-disadvantaged individual or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or DBE firm which directly or indirectly allows the non-disadvantaged individual significantly to influence business decisions of the DBE firm.

(iii) A non-disadvantaged individual or entity controls the applicant or DBE firm or an individual disadvantaged owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-disadvantaged individual or entity the power to control a firm.

(iv) Business relationships exist with non-disadvantaged individuals or entities that cause such dependence that the applicant or DBE firm cannot exercise independent business judgment without great economic risk.

* * * * *

§ 26.73 [Amended]

17. In § 26.73 paragraph (g), remove the words ''unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.''

18. In § 26.73 paragraph (h), delete ''26.35'' and add in its place ''26.65.''

19. In § 26.83, revise paragraphs (c), (h), and (j), to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and key personnel of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may

rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any. Where a firm is applying to be certified in more than one NAICS code, obtain information about the amount of work the firm has performed in the various NAICS codes requested by the firm.

(vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(vii) Obtain complete Federal and State income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service and the applicable state taxing authority.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in sections 26.84 and 26.85 of this part.

(2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(4) You must review all information on the form prior to making a decision about the eligibility of the firm. You have the discretion to request clarification of information contained in the application at any time in the application process.

* * * * *

(h)(1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. Provided that, this requirement does not apply to decertification under the circumstances specified in section 26.67(b)(1) of this Part.

(2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under section 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

* * * * *

(j) Submissions supporting continued eligibility. If you are a DBE, you must provide to the recipient annually the following items. If you fail to provide this information in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

(1) An affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts.

(2) A current personal net worth statement for each disadvantaged owner;

(3) A record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member, or to a trust any beneficiary of which is an immediate family member, within two years of the application or a subsequent certification review by the recipient. The record must provide the name of the recipient(s) and family relationship, and the difference between the fair market value of the asset transferred and the value received by the disadvantaged individual.

(4) A record of all payments, compensation, and distributions (including loans, advances, salaries and dividends) made by the DBE firm to each of its owners, officers or directors; and

(5) The firm's most recent completed IRS tax return, IRS Form 4506, Request for Copy or Transcript of Tax Form.

* * * * *

§ 26.86 [Amended]

20. In § 26.86, remove and reserve paragraph (b) and add the following sentence to the end of paragraph (c): ''An applicant's appeal of your decision to the Department pursuant to § 26.89 does not extend this period.''

21. Revise § 26.87 paragraphs (f) and (g) to read as follows:

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

* * * * *

(f) *Grounds for decision.* You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information relevant to eligibility that has been concealed or misrepresented by the firm;

(4) A change in the certification standards or requirements of the Department since you certified the firm;

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see section 26.109(c)); or

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see section 26.73(a)(2)).

(g) *Notice of decision.* Following your decision, you must provide the firm

written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

* * * * *

22. Add a new § 26.88 to read as follows:

§ 26.88 Summary Suspension of Certification.

(a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in section 26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

(b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in section 26.87(d) when (i) there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or (ii) when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by section 26.83(i) or fails to timely file an affidavit of no change under section 26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this paragraph, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under section 26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

(f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under section 26.87. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under paragraph (a)(or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under section 26.89 of this Part, as a constructive decertification.

23. In § 26.89, revise paragraphs (a)(3), (c), and (e) to read as follows:

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a) * * *

(1) * * *

(3) Send appeals to the following address: Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590.

* * * * *

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

* * *

(e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

* * * * *

24. Revise Appendix A to 49 CFR part 26 to read as follows:

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts, subject to this rule and DOT guidance implementing it. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix. DOT

Operating Administrations have the discretion to and, if necessary, change recipients' good faith efforts decisions.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Conducing market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the state's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

The bidder must solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in section 26.53(b)(2)((vi), you must also require the contractor to submit all subcontractor quotes (from DBEs and non-DBEs, successful and unsuccessful quotes) in order to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

25. Revise Appendix B to Part 26 to read as follows:

Appendix B to 49 CFR Part 26: Uniform Report of DBE Awards and Commitments/Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26.

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.

3. Specify the Federal fiscal year (i.e., October 1–September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1–March 31. If this report is due December 1, data should cover April 1–September 30.

6. Provide the name and address of the recipient.

7. State your overall DBE goal(s) established for the Federal fiscal year of the report. Your Overall Goal is to be reported as

well as the breakdown for specific Race Conscious and Race Neutral projections. The Race Conscious portion of the overall goal should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)–10(I) should include all types of prime contracts awarded and all types of subcontracts awarded, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the reporting agency and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts subcontracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for date entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round this percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)–9(I) are derived in the same way as items 8(A)–8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A): If filling out the General Reporting form, provide the total dollar amount of subcontracts assisted with DOT funds awarded during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the Project Reporting form, provide the total dollar amount of subcontracts assisted with DOT funds awarded during this period. This value should be a subset of the total dollars awarded previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all subcontracts assisted with DOT funds that were awarded during this reporting period.

9(C). From the total dollar amount of subcontracts awarded/committed this period, provide the total dollar amount awarded in subcontracts to DBEs.

9(D). From the total dollar amount of subcontracts awarded/committed in item 8(B), specify the number of subcontracts awarded.

9(E).From the total dollar amount of subcontracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of subcontracts awarded/committed to DBEs this period, provide the number of subcontracts awarded to DBEs using Race Conscious measures.

9(G). From the total dollar amount of subcontracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of subcontracts awarded/committed to DBEs this period, provide the number of subcontracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round this percentage to the nearest tenth.

10(A)–10(B). These fields are unavailable for data entry.

10(A)–11(I). 10(C). Combine the total dollars awarded to DBEs on prime contracts in 8(C) with the total dollars awarded to DBEs on subcontracts in 9(C). The amount listed here should be equal to the sum of the total dollars awarded to DBEs through Race Conscious measures 10(E) and the total dollars awarded to DBEs through Race Neutral measures 10(G).

10(D). Combine the total number of prime contracts awarded to DBEs in 8(D) with the total number of subcontracts awarded to DBEs in 9(D). The amount listed here should be equal to the sum of the total number of contracts awarded to DBEs through Race Conscious measures 10(F) and the total number of contracts awarded to DBEs through Race Neutral measures 10(H).

10(E). Combine the total dollar of prime contracts awarded to DBEs Race Conscious 8(E) with total dollar of subcontracts awarded to DBEs Race Conscious 9(E).

10(F). Combine the total number of prime contracts awarded to DBEs Race Conscious 8(F) with total number of subcontracts awarded to DBEs Race Conscious 9(F).

10(G). Combine the total dollar of prime contracts awarded to DBEs Race Neutral 8(G) with total dollar of subcontracts awarded to DBEs Race Neutral 9(G).

10(H). Combine the total number of prime contracts awarded to DBEs Race Neutral 8(H) with total number of subcontracts awarded to DBEs Race Neutral 9(H).

10(I). If filling out the General Reporting form, of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth. In the Project Reporting form, this field is closed for data entry, since overall percentage of DBE participation is not a value that can be accurately reflected on a period by period basis, and must instead derive from looking at the project as a whole over the course of time.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This period

11–18. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 18(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 18(F) should equal the Total Number of Contracts to DBEs in 10(D). Column E should only be filled out if this report is due on December 1 by recipients required to make semiannual submissions.

Line 17: The ''Other'' category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report. ''Other'' should not be used for ''Unknown.''

Section C: Payments on Ongoing Contracts

Line 19(A–E). Submit information on contracts that are currently being performed. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total dollar amount paid to all firms performing work on contracts.

19(B). Provide the total number of contracts that are currently being performed.

19(C). Provide the total number of DBE firms providing work on contracts assisted with federal funds.

19(D). Provide the total dollar value paid to DBE firms currently performing work during this period.

19(E) Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 19(C) by the total dollars of all payments in 19(A). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

20(A). Provide the total number of contracts completed during this reporting period that used Race Conscious methods. Race Conscious contracts are those with contract goals or another race conscious measure.

20(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious goals.

20(C). Provide the total dollar amount of DBE participation on all Race Conscious contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious contracts.

20(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

20(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 20(D) by the total dollar value provided in 20(B) to derive this percentage. Round to the nearest tenth.

21(A)–21(E). Items 21(A)–21(E) are derived in the same manner as items 20(A)–20(E), except these figures should be based on contracts completed using Race Neutral measures.

21(C). This field is closed.

22(A)–22(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

22(C). This field is closed.

22(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 22(D) by the Total Dollar Value of Contracts Completed in 22(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

** Submit your completed report to your Regional or Division Office.

BILLING CODE 4910–9X–P

General Reporting

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

****Please refer to the Instructions sheet for directions on filling out this form****

1	Submitted to (check only one):	[ ] FHWA	[ ] FAA	[ ] FTA–Recipient ID Number				
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):							
3	Federal fiscal year in which reporting period falls:			4. Date This Report Submitted:				
5	Reporting Period	[ ] Report due June 1 (for period Oct. 1-Mar. 31)		[ ] Report due Dec. 1 (for period April 1-Sept. 30)		[ ] FAA annual report due Dec. 1		
6	Name and address of Recipient:							
7	Annual DBE Goal(s):	Race Conscious Projection		Race Neutral Projection		OVERALL Goal		

Awards/Commitments this Reporting Period

		A	B	C	D	E	F	G	H	I
A	**AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD** (total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8	Prime contracts awarded this period									
9	Sub contracts awarded/committed this period									
10	**TOTAL**									

B	**BREAKDOWN BY ETHNICITY & GENDER**	Contracts Awarded to DBEs this Period					
		A	B	C	D	E	F
		Total to DBE (dollar amount)			Total to DBE (number)		
		Women	Men	Total	Women	Men	Total
11	Black American						
12	Hispanic American						
13	Native American						
14	Asian-Pacific American						
15	Subcontinent Asian Americans						
16	Non-Minority						
17	Other						
18	**TOTAL**						

Payments Made this Period

C	**PAYMENTS ON ONGOING CONTRACTS** (report activity of ongoing contracts)	A	B	C	D	E	F
		Number of Ongoing Contracts	Total Payments Made	Total Number of Contracts with DBEs	Total Number of DBE firms working	Total Payments to DBE firms	Percent to DBEs
19	Prime and sub contracts currently in progress						

D	**TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD**	A	B	C	D	E
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs
20	Race Conscious					
21	Race Neutral					
22	Totals					

23	Submitted By:	24. Signature:	25. Phone Number:

49 CFR Part 26 Appendix B: Version 6(a)

Project Reporting

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

Please refer to the instructions sheet for directions on filling out this form

1 Submitted to (check only one): [ ] FHWA [ ] FAA [ ] FTA Recipient ID Number

2 AIP Numbers (FAA Recipients) Grant Number (FTA Recipients):

3 Federal fiscal years on which reporting period falls:

4 Date This Report Submitted:

5 Reporting Period: [ ] Report due June 1 (for period Oct. 1-Mar. 31) [ ] Report due Dec. 1 (for period April 1-Sept. 30) [ ] Fifth annual report due Dec. 1

6 Name and address of Recipient:

7 Annual DBE Goal(s): Race Conscious Projection Race Neutral Projection OVERALL Goal

Awards/Commitments this Reporting Period

A	B	C	D	E	F	G	H	I
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8 Prime contracts awarded this period:									
9 Subcontracts awarded/committed this period:									
10 TOTAL									

B	Contracts Awarded to DBEs this Period								
	A	B	C	D	E	F			
BREAKDOWN BY ETHNICITY & GENDER	Total to DBE (dollar amount)			Total to DBE (number)					
	Women	Men	Total	Women	Men	Total			
11 Black American									
12 Hispanic American									
13 Native American									
14 Asian-Pacific American									
15 Subcontinent Asian Americans									
16 Non-Minority									
17 Other									
18 TOTAL									

Payments Made this Period

C	A	B	C	D	E	F
PAYMENTS ON ONGOING CONTRACTS (report across all ongoing contracts)	Number of Ongoing Contracts	Total Payments Made	Total Number of Contracts with DBEs	Total Number of DBE firms working	Total Payments to DBE firms	Percent to DBEs
19 Prime and sub contracts currently in progress						

D	A	B	C	D	E	F
TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)		Percent to DBEs
20 Race Conscious						
21 Race Neutral						
22 Totals						

23 Submitted By: 24. Signature: 25. Phone Number:

49 CFR Part 26 Appendix B- Version 6(b)

26. Revise Appendix F to Part 26 to read as follows:

Appendix F to 49 CFR Part 26: Uniform Certification Application Form

U.S. DEPARTMENT OF TRANSPORTATION

UNIFORM CERTIFICATION APPLICATION

DISADVANTAGED BUSINESS ENTERPRISE /

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

49 CFR PARTS 23 and 26

Send Application To:

[UCP PARTICIPATING MEMBER]

[Address]

[Phone:] [Fax]

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR section 26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR section 23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if you answer "Yes" to the following:

- Is your firm organized as a for-profit business that performs or seeks to perform transportation related work for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds?

- Is your firm at least 51% owned by a socially and economically disadvantaged individual(s) who also controls the firm?

- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?

- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed $22.41 million in gross annual receipts for DBE ($52.47 million for ACDBEs)? (Note, other size standards apply ACDBE applications from banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

You must complete and submit this certification application and related material to an agency in your home state; and second participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied.

3. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. DOT recipients of federal assistance must participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification procedure that eliminates the need for your firm to obtain certification from multiple agencies within the state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 CFR Parts 23 and 26.

4. Where can I find more information?

U.S. DOT—http://www.osdbu.dot.gov/DBEProgram/index.cfm (This site provides useful links to the rules and regulations governing the DBE/ACDBE programs, questions and answers, and other pertinent information)

http://www.census.gov/eos/www/naics/ (provides a listing of NAICS codes) and

http://www.sba.gov/content/table-small-business-size-standards (SBA has established a Table of Small Business Size Standards that is matched to the North American Industry Classification System (NAICS) for industriesprovides a listing of NAICS codes and size standards)

Under 49 CFR §26.107, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

INSTRUCTIONS FOR COMPLETING THE

DISADVANTAGED BUSINESS ENTERPRISE

AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE

UNIFORM CERTIFICATION APPLICATION

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) State the contact person and title of the person completing this application and the person who will serve as your firm's primary contact for this application.
(2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
(3) State the primary phone number of your firm.
(4) State a secondary phone number, if any.
(5) State your firm's fax number, if any.
(6) State the contact person's email address.
(7) State your firm's website address, if any.
(8) State the street address of your firm (i.e. the physical location of its offices—not a post office box address).
(9) State the mailing address of your firm, if it is different from your firm's street address. Check the box if this is homes based business and identify who holds title to the property.

B. Prior/Other Certifications and Applications

(10) Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE/ACDBE, indicate in the appropriate box the name of the certifying agency that certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the dates of the review(s) and the state UCP(s) that conducted the review.

(11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or SDB firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have *ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).*

Section 2: GENERAL INFORMATION

A. Business profile:

(1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first. Use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE.
(2) Identify the appropriate NAICS Code for the line(s) of work you identified in your business profile.
(3) State the date on which your firm was officially established as stated in your firm's Articles of Incorporation or charter.
(4) State the date on which you and/or each other owner took ownership of the firm.
(5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
(6) Check the appropriate box that indicates whether your firm is "for profit." **NOTE:** If you checked "No," then you do NOT qualify for the DBE/ACDBE program and should not complete the rest of this application. All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
(7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or similar document. If you checked "Other," briefly explain in the space provided.
(8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," explain the circumstances in the space provided.
(9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
(10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns. You must submit complete copies of the firm's State and Federal tax returns for each year and audited financial statements (if available). If there are any affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firm(s) state and federal tax returns. Affiliation is defined in 49 CFR §26.5 and 13 CFR part 121.

B. Relationships and Dealings with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Provide an explanation of any items shared with other firms in the space provided.
(2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past.
(3) Check the appropriate box that indicates whether at present or at any time in the past your firm:
(a) has been a subsidiary of any other firm;
(b) existed as a partnership in which one or more of the partners are/were other firms;
(c) has owned any percentage of any other firm; and
(d) has had any subsidiaries of its own.
(e) has served as a subcontractor with another firm constituting more than 25% of your firm's receipts?

If you answered "Yes" to any of the questions in (3)(a-e), describe the subsidiaries, partnership interests or other arrangements. In addition, explain whether these relationships are continuing today, or if not, when they ended.

C. Immediate Family Member, Manager, or Employee Businesses

Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company they own or manage the

type of business, and whether they own or manage the company.

Section 3: OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

(1) Give the name of the owner.
(2) State his/her title or position within your firm.
(3) Give his/her home phone number.
(4) State his/her home (street) address.
(5) Indicate this owner's gender.
(6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
(7) Check the appropriate box to indicate whether this owner is a U.S. citizen. If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.
(8) (a)(i) State the personal net worth of each owner claiming to be socially and economically disadvantaged applying for DBE qualification. (Each owner claiming disadvantaged status must submit a separate statement. (ii) State whether a trust has been created for the benefit of this owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s). **NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)** Use the PNW form at the end of this application to compute each disadvantaged owner's PNW.

B. Ownership Interest

(1) State the number of years during which this owner has been an owner of your firm.
(2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired the shares. Attach documentation substantiating this investment.
(3) Indicate the number, percentage of the total, class, date acquired, of stock acquired by the owner.
(4) Describe the familial relationship of this owner to each other owner of your firm and employees.
(5) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's title or function held in that business.
(6) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the function at the firm.
(b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

(1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
(2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
(3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.

(5) Check the appropriate box to that indicates whether the applicant business and/or owner is involved in any present or pending litigation or administrative proceedings. If you answered "Yes," provide details of the litigation or administrative proceedings.

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel

In the chart provided, specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who perform significant functions for the business. Make enough copies of this form to provide information on each and every person. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race, percentage of the firm that they own, gender, salary and benefits.

Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never"

(1) Setting policy for company direction/scope, or financial decisions.
(2) Bidding and estimating including calculation of cost estimates, bid preparation and submission;
(3) Making purchasing decisions
(4) Marketing and sales
(5) Supervising field operations
(6) Attending bid openings and lettings
(7) Perform office management, such as billing, accounts receivable, and accounts payable
(8) Hires and fires management staff
(9) Hire and fire field staff or crew
(10) Designates profit spending or investment
(11) Obligates the business by contract/credit/bond/insurance
(12) Purchase equipment
(13) Signs business checks

Check the appropriate box that indicates whether any of the persons listed in (1) through (13) above perform a management or supervisory function for any other business. If yes identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Indicate firm inventory in the following categories:

(1) Equipment and Vehicles
State the type, make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm and where this item is stored.

(2) Office Space
State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space
State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name and address of your firm's bank. In the space provided, identify the individuals able to sign checks on this account.

Bonding Information. State your firm's Binder Number. State the name of your firm's bond agent and/or broker. Give your agent's/broker's phone number. Give your agent's/broker's address. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount

and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. List current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

I. List the three largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. List the three largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for DBE/ACDBE certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

UNIFORM DBE/ACDBE CERTIFICATION APPLICATION **Date_____**

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Contact person and Title: _____ **(2) Legal name of firm:** _____

_____ _____

(3) Phone #: (___) _____ - _____ **(4) Other Phone #:** (____) _____ - _____ **(5) Fax #:** (____) _____ - _____

(6) E-mail: _____ **(7) Firm Websites:** _____

(8) Street address of firm *(No P.O. Box)*: **City:** **County/Parish:** **State:** **Zip**:

_____ _____ _____ _____ _____ - ____

(9) Mailing address of firm (*if different*): **City:** **County/Parish:** **State:** **Zip:**

_____ _____ _____ _____ _____ - ____

Home Based Business? ❑ Yes ❑No **If Yes, who holds the title to the property?** _____

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following programs? *(If Yes, check appropriate box(es))*

❑ DBE ❑ ACDBE Names of certifying agencies:

_____

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ____/ ____/____ State/UCP Member: _____

Date ____/ ____/____ State/UCP Member: _____

Date ____/ ____/____ State/UCP Member: _____

You will be required to provide a copy of the above on-site reports as part of this application process.

❑**Already certified in your home state?** ⊗ STOP! You may not have to complete this application. Ask your state UCP about the streamlined application process.

(11) Has your firm (under any name) or any firm owned or controlled by your firm's owners, Board of Directors, officers or management personnel, ever been:

(a) Denied certification as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ❑ Yes ❑No

(b) Decertified from these programs? ❑ Yes ❑No

(c) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ❑ Yes ❑No

If yes to any of the above, identify all state, local, or Federal agencies and explain the nature of the action(s):

_____

If you appealed this decision to USDOT, what was the result? Please attach a copy of USDOT's decision(s).

_____

_____

_____

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

_____

_____

_____

_____

_____

_____

_____

(2) Applicable NAICS Codes for this line of work include: _____ _____ _____ _____ _____ _____

(3) This firm was established on ____/____/____

(4) I/We have owned this firm since: ____/____/____

(5) Method of acquisition *(Check all that apply)*:

❑ Started new business ❑ Bought existing business ❑ Inherited business ❑ Secured concession

❑ Merger or consolidation ❑ Other *(explain)* _____

(6) Is your firm "for profit"? ❑ Yes ❑No→ ⊗ **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.

Employer's ID # _____

Federal Tax ID# _____

(7) Type of Legal Business Structure: *(check all that apply)*:

❑ Sole Proprietorship ❑ Limited Liability Partnership
❑ Partnership ❑Corporation
❑ Limited Liability Corporation ❑ Joint Venture (Identify all JV partners _____)
❑ Applying as an ACDBE
❑ Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?

❑ Yes ❑ No If Yes, explain: _____

_____

_____

(9) Number of employees: Full-time _____ Part-time _____ Seasonal _____Total _____

(Please attach a list of employees, their job titles, and dates of employment, to your application).

(10) Specify the firm's gross receipts for the last 3 years. You must submit complete copies of the firm's State and Federal tax returns for each year, and audited financial statements (if available). If there are any affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' State and Federal tax returns.

Year _____ Total receipts $ _____

Year _____ Total receipts $ _____

Year _____ Total receipts $ _____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ❑ Yes ❑ No If Yes, explain fully the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?

❑ Yes ❑ No If Yes, explain_____

(3) At present, or at any time in the past, has your firm:

(a) been a subsidiary of any other firm? ❑ Yes ❑ No
(b) existed as a partnership in which one or more of the partners are/were other firms? ❑ Yes ❑ No
(c) owned any percentage of any other firm? ❑ Yes ❑ No
(d) had any subsidiaries? ❑ Yes ❑ No
(e) been a subcontractor with another firm constituting more than 25% of your firm's receipts? ❑ Yes ❑ No

If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(e), describe the subsidiaries, partnership interests, or other arrangements and whether this continues. Please attach a separate sheet if necessary.

_____
_____
_____
_____
_____

C. Immediate Family Member, Manager, or Employee Businesses

Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, then list: *(Please attach extra sheets, if needed)*:

Name	Relationship	Company	Type of Business	Own/Manage/Associated with
1.				
2.				
3.				

Section 3: MAJORIY OWNER INFORMATION

A. In this section, specify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name:	(2) Title:	(3) Home Phone #:
_____	_____	( ) _____ - _____

(4) Home Address (*Street and Number*):	City:	State:	Zip:

_____	_____	_____	_____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership

(Check all that apply):

❑ Black ❑ Hispanic

❑ Asian Pacific ❑ Native American

❑ Subcontinent Asian

❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑Birth ❑Naturalized

❑Lawfully Admitted Permanent Resident

(8)(a) Economic Disadvantaged Status: Complete this section only for each owner claiming to be socially and economically disadvantaged applying for DBE qualification.

(i) What is the Personal Net Worth of the owner applying for DBE/ACDBE qualification? $_____

(Use and attach the Personal Financial Statement form attached to this application. Each owner must submit a separate statement).

(ii) Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
If Yes, provide a copy (A*ttach additional sheets if needed*):

B. Ownership Interest

(1) Number of years as owner: _____

(3) Percentage owned: _____ %

Class of stock owned: _____

Date acquired _____

(2) **Initial investment to acquire ownership interest in firm**:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

(4) Describe familial relationship to other owners and employees:_____
_____
_____
_____
_____
_____

Describe how you acquired your business

- ❑ Started business myself
- ❑ It was a gift from: _____
- ❑ I bought it from: _____
- ❑ I inherited it from: _____
- ❑ Other

(Attach documentation substantiating your investment)

(5) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(6)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify than name of the business, and the nature of the relationship, and the owner's function at the firm:
_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____
_____

Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in your firm (*If more than one owner holding less than 51%, attach separate sheets for each additional owner)*

(1) Full Name:	**(2) Title:**	**(3) Home Phone #:**
_____	_____	( ) _____ - _____

(4) Home Address (*street and number)*:	**City:**	**State:**	**Zip:**
_____	_____	_____	_____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership

(Check all that apply):

❑ Black ❑ Hispanic

❑ Asian Pacific ❑ Native American

❑ Subcontinent Asian

❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑Birth ❑Naturalized

❑Lawfully Admitted Permanent Resident:

(8)(a) Economic Disadvantaged Status: Complete this section only for each owner claiming to be socially and economically disadvantaged applying for DBE qualification

(i) What is the Personal Net Worth of the owner applying for DBE/ACDBE qualification? $_____

(Use and attach the Personal Financial Statement form attached to this application. Each owner must submit a separate statement).

(ii) Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
If Yes, please explain (*attach additional sheets if needed*):

B. Ownership Interest

(1) Number of years as owner: _____

(3) Percentage owned: _____ %

Class of stock owned: _____

Date acquired _____

(2) **Initial investment to acquire ownership interest in firm**:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

(4) Describe familial relationship to other owners and employees:_____
_____
_____
_____
_____
_____
_____

Describe how you acquired your business

- ❑ Started business myself
- ❑ It was a gift from: _____
- ❑ I bought it from: _____
- ❑ I inherited it from: _____
- ❑ Other

Attach documentation substantiating your investment

(5) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(6)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify than name of the business, and the nature of the relationship, and the owner's function at the firm:
_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____
_____

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors

(If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the	(a)				
	(b)				
	(c)				

Company (d) _____

(e) _____

(2) Board of Directors (a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(3) Do any of the persons listed above perform a management or supervisory function for any other business? ❑ Yes ❑ No If Yes, identify for each:

Person: _____ Title: _____

Business: _____ Function: _____

Person: _____ Title: _____

Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)?
❑ Yes ❑ No If Yes, identify for each:

Firm Name: _____ Person: _____

Nature of Business Relationship: _____

(5) Is the applicant business and/or owner involved in any present or pending lawsuits?

❑ Yes ❑ No If Yes, provide details:

_____

_____

_____

_____

_____

_____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel

Complete for all owners and non-owners who perform significant functions for the business. Make enough copies of this form to provide information on each and every person. ***Submit résumés for each person identified below.*** Circle the frequency of each person's involvement as follows:

	Majority Owner (51% or more)				Minority Owner (49% or less)			
A= Always **F = Frequently** **S = Seldom** **N = Never**	Name: _____ Title: _____ Race:_____ Percent Owned:_____ Gender: _____Male _____Female Salary: $_____ Other Benefits $_____				Name: _____ Title: _____ Race:_____ Percent Owned:_____ Gender: _____Male _____Female Salary: $_____ Other Benefits $_____			
Sets policy for company direction/scope/ of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervises field operations	A	F	S	N	A	F	S	N
Attend bid opening and lettings	A	F	S	N	A	F	S	N
Perform office management, such as billing, accounts receivable and accounts payable, etc.	A	F	S	N	A	F	S	N
Hires and fires management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designates profits spending or investment	A	F	S	N	A	F	S	N
Obligates business by contract/credit/bond/insurance	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Signs business checks	A	F	S	N	A	F	S	N

Do any of the persons listed above perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function:

_____
_____
_____
_____
_____
_____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No

If Yes, describe the nature of the business relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel, continued.

Complete for all owners and non-owners who do anything listed below for the business. Make enough copies of this form to provide information on each and every person. ***Submit résumés for each person identified below.*** Circle the frequency of each person's involvement as follows:

	Person 3				Person 4			
A= Always **F = Frequently** **S = Seldom** **N = Never**	Name: _____ Title: _____ Race:_____ Percent Owned:_____ Gender: _____Male ____Female Salary: $_____ Other Benefits $_____				Name: _____ Title: _____ Race:_____ Percent Owned:_____ Gender: _____Male ____Female Salary: $_____ Other Benefits $_____			
Sets policy for company direction/scope/ of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervises field operations	A	F	S	N	A	F	S	N
Attend bid opening and lettings	A	F	S	N	A	F	S	N
Perform office management, such as billing, accounts receivable and accounts payable, etc.	A	F	S	N	A	F	S	N

Hires and fires management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designates profits spending or investment	A	F	S	N	A	F	S	N
Obligates business by contract/credit/bond/insurance	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Signs business checks	A	F	S	N	A	F	S	N

Do any of the persons listed above perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function:

_____

_____

_____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No

If Yes, describe the nature of the business relationship:

_____

C. Inventory:

Indicate your firm's inventory in the following categories *(Please attach additional sheets if needed):*

Equipment and Vehicles *(Provide titles, proof of ownership, or signed lease agreements for the items listed)*

Type of Equipment or Vehicle (Make and Model)	Current Value	Owned or Leased by Firm or Owner?	Where is this item stored?
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			

Office Space *(Provide signed lease agreements for the properties listed)*

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease
1.		
2.		

Storage Space *(Provide signed lease agreements for the properties listed)*

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease
1.		
2.		

D. Does your firm rely on any other firm for management functions or employee payroll? ❑ Yes ❑ No

If Yes, explain:

_____

_____

_____

E. Financial / Banking Information *(Provide bank authorization and signature cards)*

Name of bank: _____

Address of bank: _____ City: _____ State: _____ Zip: _____

The following individuals are able to sign checks on this account: _____

Name of bank: _____

Address of bank: _____ City: _____ State: _____ Zip: _____

The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify: (a) Binder No: _____

(b) Name of agent/broker _____ (c) Phone No: ( ) _____

(d) Address of agent/broker: _____ _____

(e) Bonding limit: Aggregate limit $ _____ Project limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms securing the loan, if other than the listed owner. (*Provide copies of signed loan agreements and security agreements).*

Name of Source	*Address of Source*	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years (*attach additional sheets if needed*)**:**

Contribution/Asset	Dollar Value	*From Whom Transferred*	*To Whom Transferred*	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm

(*e.g. contractor, engineer, architect, etc.)(Provide copies of the licenses and attach additional sheets if needed)*:

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AIRPORT CONCESSION (ACDBE) APPLICANTS MUST COMPLETE THIS PAGE

Concession Space	Address / Location at Airport	Value of Property or Lease	Fees/Lease Payments Paid to the Airport

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

Name of Concession	**Location**	**Type of Concession**	**Start Date of Concession**

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ _____(title) of the applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract, subcontract, concession lease or sublease, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE) or Airport Concession Disadvantaged Business Enterprise (ACDBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s): (Check all that apply):

❑ Female ❑ Black American ❑ Hispanic American ❑ Native American ❑ Asian- Pacific American

❑ Subcontinent Asian American ❑Other (specify)

_____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed $1.32 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Signature _____ Executed on _____(Date)

(DBE/ACDBE Applicant)

NOTARY CERTIFICATE

Subscribed and sworn to before me this ___day of _____, 20___.

_____

Notary Public in and for the State of:

Residing at:_____

_____

My Commission Expires:_____

UNIFORM CERTIFICATION APPLICATION

SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following documents. The UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required. A failure to supply any information requested by the UCP may result in a determination that you failed to cooperate.

All Applicants

- Résumés (that include places of ownership/employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- Personal Net Worth Statement for socially and economically disadvantaged owners (form available with this application)
- Personal Federal and State tax returns for the past 3 years, if applicable, for each disadvantaged owner
- Federal and state tax returns (and requests for extensions) filed by the firm and its affiliates including all related schedules, and firm audited financial statements (if available) for the past 3 years.

- Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment and/or vehicles owned and leased. Signed lease agreements and titles/proof of ownership
- Property leases
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE, ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and U.S. DOT appeal decisions (if any) on these actions.
- Bank authorization and signatory cards
- Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- List of all employees, job titles, and dates of employment.
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (*signed by the state official*)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement

□ Minutes of all stockholders and board of directors meetings

□ Corporate by-laws and any amendments

□ Corporate bank resolution and bank signature cards

□ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

□ Documented proof of ownership of the company

□ Insurance agreements for each truck owned or operated by your firm

□ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm

Suppliers

□ Proof of warehouse/storage facility ownership or lease arrangements

□ List of product lines carried and list of distribution equipment owned and/or leased

27. Add a new Appendix G to Part 26, to read as follows:

APPENDIX G to 49 CFR Part 26: Personal Net Worth Statement

U.S. Department of Transportation

Appendix G

Personal Net Worth Statement
For DBE/ACDBE Program Eligibility

OMB APPROVAL NO:
EXPIRATION DATE:

As of _____

This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise Programs as set forth in 49 CFR Parts 23 and 26 and must be submitted to determine whether an owner is economically disadvantaged. Complete this form separately for: (1) each disadvantaged proprietor, (2) each limited partner who owns 51% or more interest and each general partner, and (3) each stockholder owning 51% or more of voting stock.

Do not make adjustments to your figures pursuant to the DBE Program Regulation. The agency you apply to will use the information provided on this statement to determine your personal net worth. Please send form to appropriate Unified Certification Program member, not U.S. DOT.

Full Name		**Business Name of Applicant Firm**	
Residence Address (As reported to the IRS)		**Business Address**	
City, State and Zip Code		**City, State and Zip Code**	
Residence Phone		**Business Phone**	
Marital Status: Married, Divorced, Never Married, Widowed		**Spouse's Full Name**	

ASSETS	(Omit Cents)		**LIABILITIES**	(Omit Cents)
		Joint Asset?		
Cash and Cash Equivalents (Complete Section 1A)	$		**Mortgages on Real Estate Excluding Primary Residence (Complete Section 2**	$
Retirement Accounts (IRA, 401Ks, 403Bs, Pensions, etc) (Report Full Value and Complete Section 1B)	$		**Loan on Life Insurance (Complete Section 3)**	$
Brokerage, Investment Accounts (Complete Section 1C)	$		**Notes, Obligations on Personal Property (Complete Section 4)**	$
Assets Held in Trust (Complete Section 1D)	$		**Notes & Accounts Payable to Banks and Others (Complete Section 6)**	$
Shareholder Loans & Other Receivables (Complete section 1E)	$		**Other Liabilities (Complete Section 7)**	$
Real Estate Excluding Primary Residence (Complete Section 2)	$		**Unpaid Taxes (Complete Section 8)**	$
Life Insurance (Cash Surrender Value Only) (Complete Section 3)	$			
Other Personal Property and Assets (Complete Section 4)	$			
Other Business Interests (Complete Section 5)	$			
Total Assets	$		**Total Liabilities**	$

ASSETS (Provide Current Account Statements)

SECTION 1A: Cash on Hand, Checking, Savings, Money Market, Certificates of Deposit

Name on Account (including co-owners)	Type of Account (checking, savings, revolving credit, IRA, other, (explain)	Bank Name and Address	Account number	Account Status (joint, single, trust)	Current Balance
				Total	

Section 1B: Retirement Accounts, IRA, 401Ks, 403Bs, Pensions

Name on Account (including co-owners)	Type of Account	Bank Name and Address	Account number	Current Balance
			Total	

SECTION 1C: Brokerage/Investment Accounts

Name of Brokerage Firm And account number)	Type of Account	Market value as of date of form
	Total	

SECTION 1D: Assets Held in Trust: (Submit trust agreements and amendments, and document the valuation of assets)

Name of Settlor	Type of trust (revocable, irrevocable, etc.)	Date Trust established	Specific Assets held and Value	Date and Method of Valuation	Trustee	Names of Beneficiaries

Section 1E: Securities Not reported in Section 1C and Shareholder Loans, Promissory Notes and Other Receivables Not Listed Above: Provide amount and describe:

_____

_____

_____

SECTION 2: Real Estate Owned (Including Personal Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property.

(List each parcel separately. Submit copies of deeds for each parcel, mortgage note, instrument of conveyance) Add additional sheets if necessary.

	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name & Address of all Mortgage Holders, including			
Mortgage Account Number			
Mortgage Balance As of Date of Form:			
Equity line of credit Balance			
Amount of Payment Per Month/Year (Specify)			

SECTION 3: Life Insurance Held

(Submit policies and most recent statement)

(Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).

Insurance Company	Face Value Amount	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

SECTION 4: Other Personal Property and Assets

(Other documentation may be required upon request, such as invoices, bill of sale, valuation documents, insurance policies)

Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured? (If so, attach a copy of the policy)	Lien or Note amount and Terms of Payment (Attach a copy of the instrument)
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods				
Jewelry				
Other (List)				

Accounts and Notes Receivables				

Total Present Value: $ _____

Total Liability: $ _____

Total Personal Property $ _____

SECTION 5: Other Business Investments, Other Businesses Owned (excluding applicant firm)

Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations (Provide the information below and submit business financial statements, balance sheets including net worth, Federal tax returns)

Name of Sole Proprietorship, partnership, Joint Venture (Indicate % of ownership)	Address	Business Value in $	Date Acquired	Names of Partners, Unit holders, % of Ownership, and Date Acquired	Primary scope of Operations
Name of Corporation or LLC	Address	Business Value in $	Date Acquired	Name of Stockholders on Certificates, Date Stock Acquired, Total Outstanding Shares of Stock or Units, Market Value and Date of Quotation/Exchange,	Primary scope of Operations

LIABILITIES

SECTION 6: Notes and Accounts Payable to Bank and Others (Including Installment accounts)

(Submit copy of note/security agreement, and most recent account statement)

Name of Borrower(s)	Name of Noteholder(s)	Date of Instrument	Original Balance	Current Balance	Payment Amount and Terms	How Secure/By Whom Guaranteed, Collateral

SECTION 7: Other Liabilities

(Submit copy of most recent statement, or any other debt instrument)

Name of Individual Obligated	Name of Co-signer(s)	Description	Name and Address of Entity Owed	Date of Obligation	Amount	Payment Amount and Terms (frequency)

SECTION 8: Unpaid Taxes

(Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches).

Name of Individual Obligated	Name of Co-signer(s)	Type of Unpaid Tax	Payable to Whom	Date Due	Amount	Property Attached with Tax Lien (if any)

SECTION 9: Transfer of Assets: Have you transferred, within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes ☐ No ☐

(Provide a brief description of all transfers of assets within 2 years from date of application. List the names of individuals on deed, title, note or other instrument receiving assets and relation to transferor.(Submit Bill of Sale or Invoice, transfer document (title, deed, etc., date of transfer, estimate or valuation of the consideration received))

_____

_____

_____

_____

AFFIDAVIT

I declare under penalty of perjury that the information provided in this application and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

_____ _____

Signature (DBE/ACDBE Applicant) Date

NOTARY CERTIFICATE: (Insert applicable state acknowledgment, affirmation, or oath)

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR section 26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR section 23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 CFR Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth Statement to determine whether you meet the economic disadvantage requirements of 49 CFR Part 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's Personal Net Worth according to 49 CFR Part 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Be sure to indicate whether the figures reported are jointly held.

If your personal net worth according to 49 CFR Parts 23 and 26 exceeds the $1.32 million cap and you, individually, or you and other individuals are the majority owners of an applicant firm, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the $1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement. If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. ***Assessor's assessed value for real estate, for***

example, is not acceptable. Assets held in a trust generally should be included.

Cash and Cash Equivalents: In Section 1A Enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: Enter the total present value of all accounts (including Roth IRAs) and other retirement accounts, including any deferred compensation and pension plans in Section 1B.

Brokerage/Investment Accounts: Enter the name of brokerage firm and account number; type of account and current market value of the account as of the date of the PNW statement.

Assets Held in Trust: Enter the specific assets held in trust, the names of beneficiaries and trustees, and other information. Complete Section 1D.

Securities Not Reported Above, including Shareholder Loans, Promissory Notes, and Other Receivables not listed: Enter amounts loaned to you from your firm, from or any other business entity in which you hold an ownership interest, and other receivables not listed above . Complete Section 1E.

Real Estate: Complete Section 2, beginning with your primary residence (be sure to identify it as your primary residence); enter the type of property, address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, name and address of all mortgage holders, mortgage account number, mortgage balance, equity line of credit balance, and amount of payment, for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: Enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and any loans on the policy in Section 3.

Other Personal Property and Assets: Enter personal property and other assets owned in Section 4. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. Enter the present value of the personal property owned, amount of liabilities, and whether the asset is insured. For accounts and notes receivable**,** enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if any. If the asset is insured, please attach a copy of the policy. Also attach a copy of any liens or notes on the property and indicate in the space provided the terms of payment. Total the present value and liabilities at the bottom of the form.

Other Business Investments/Other Businesses Owned Interests: Enter information concerning any businesses you hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm) in Section 5. Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate in section 2.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies in Section 3.

Notes & Accounts Payable to Bank and Others: Enter the name of borrowers, noteholders, date of note, original and current balances, payment terms, and security/collateral information in Section 6. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 2. Do not include loans for your business or mortgages for your properties in Section 6. Submit copy of note/security agreement, and the most recent account statement)

Other Liabilities: Enter the total value due on all other liabilities not classified in the previous entries. Report the name of the individual obligated, names of co-signers, a description of the liability, the name and address of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do

not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid in Section 8. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: Detail all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date at the statement. The Personal Net Worth Statement must be notarized

[FR Doc. 2012–21231 Filed 9–5–12; 8:45 am]
BILLING CODE 4910–9X–P

FEDERAL REGISTER

Vol. 77 Thursday,
No. 173 September 6, 2012

Part III

Department of Commerce

United States Patent and Trademark Office

37 CFR Parts 1, 41, and 42
Setting and Adjusting Patent Fees; Proposed Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 41, and 42

[Docket No. PTO–C–2011–0008]

RIN 0651–AC54

Setting and Adjusting Patent Fees

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to set or adjust patent fees as authorized by the Leahy-Smith America Invents Act (Act or AIA). The proposed fees will provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of patent operations, while helping the Office implement a sustainable funding model, reduce the current patent application backlog, decrease patent pendency, improve patent quality, and upgrade the Office's patent business information technology (IT) capability and infrastructure. The Office also proposes to reduce fees for micro entities under section 10(b) of the Act (75 percent discount). The proposed fees also will further key policy considerations. For example, the proposal includes multipart and staged fees for requests for continued examination and appeals, both of which aim to *increase patent prosecution options for applicants.*

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before November 5, 2012 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *fee.setting@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop—Office of the Chief Financial Officer, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Michelle Picard.'' Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet, which allows the Office to more easily share comments with the public. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Michelle Picard, Office of the Chief Financial Officer, by telephone at (571) 272–6354; or Dianne Buie, Office of Planning and Budget, by telephone at (571) 272–6301.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of This Action

The Office proposes these rules under section 10 of the Act (section 10), which authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under Title 35, United States Code (U.S.C.) for any services performed by, or materials furnished by, the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs to the Office with respect to such patent operations. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy considerations, while taking into account the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee and oversight by Congress.

The fee schedule proposed under section 10 in this rulemaking will recover the aggregate estimated costs of the Office while achieving strategic and operational goals, such as implementing a sustainable funding model, reducing the current patent application backlog, decreasing patent pendency, improving patent quality, and upgrading the patent IT business capability and infrastructure.

The United States economy depends on high quality and timely patents to protect new ideas and investments for business and job growth. The Office estimates that the additional aggregate revenue derived from the proposed fee schedule will enable a decrease in total patent pendency by 12 months for the five-year planning horizon (FY 2013–FY 2017), thus permitting a patentee to obtain a patent sooner than he or she would have under the status quo fee schedule. The additional revenue from the proposed fee schedule will also recover the aggregate cost of building a three-month patent operating reserve by FY 2017, thereby continuing to build a sustainable funding model that will aid the Office in maintaining shorter pendency and a smaller backlog.

The proposed rule will also advance key policy considerations, while taking into account the cost of individual services. For example, the proposal includes multipart and staged fees for requests for continued examination and appeals, both of which aim to increase patent prosecution options for applicants. Also, this rule would include a new 75 percent fee reduction for micro entities, and expand the availability of the 50 percent fee reduction for small entities as required under section 10, providing small entities a discount on more than 25 patent fees that do not currently qualify for a small entity discount. All in all, as a result of these proposed adjustments to patent fees, for all applicants the routine fees to obtain a patent (*i.e.,* filing, search, examination, publication, and issue fees) will decrease by at least 22 percent relative to the current fee schedule.

B. Parallel Rulemaking

January and February 2012 Proposed Rules. In January and February 2012, the Office proposed rules setting fees for the new patent-related services authorized by the Act using its rulemaking authority under 35 U.S.C. 41(d). The Office proposed those rules under section 41(d) because fees for the new patent-related services must be in place one year from the AIA's enactment (September 16, 2012) and because the Office would not finish with its section 10 rulemaking by that date.

Unlike section 10 of the Act, section 41(d) of title 35 of the U.S.C. requires the Office to set fees for processing, services, or materials relating to patents at amounts to recover the estimated average cost to the Office of the particular processing, activity, service, or material per action (as opposed to the aggregate cost of all processing,

activities, services and material). 35 U.S.C. 41(d)(2). On January 5, 2012 (77 FR 448), the Office proposed fees for filing third party submissions; on January 25, 2012 (77 FR 3666), the Office proposed fees for *ex parte* reexaminations and supplemental examinations; on February 9, 2012 (77 FR 6879), the Office proposed fees for *inter partes* reviews, post-grant reviews, covered business method reviews, and derivation proceedings. Collectively, these rules are referred to herein as the ''January and February 2012 Proposed Rules.''

The fees proposed in the January and February 2012 Proposed Rules are set to recover the Office's costs per action under section 41(d), as opposed to the Office's aggregate costs for all patent-related activities under section 10. The Office intends to finalize fees proposed in the January and February 2012 Proposed Rules within the coming months to meet its implementation obligations under the Act to institute certain new services. However, the Office anticipates that the fees in those final rules will only be needed on a temporary basis, from September 16, 2012, until this rulemaking becomes final. The instant notice of proposed rulemaking (NPRM) does not reopen the comment period for the January and February 2012 Proposed Rules. Rather, this NPRM establishes a different comment period for setting and adjusting fees under section 10. In sum, this parallel rulemaking is necessary so that the Office can comply with both the Act's one-year deadline for instituting certain new services, and commence the lengthier process under section 10 for setting or adjusting fees for all of the Office's patent processing, activities, services, and material. The Office provides additional information about the AIA implementation effort, including how the components of the AIA relate to one another, on its Web site, *http://www.uspto.gov/aia_implementation/index.jsp.*

Proposed CPI Rule. Similarly, in a separate rulemaking, the USPTO proposed to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI) under 35 U.S.C. 41(f). *See* 77 FR 8331 (May 14, 2012). This increase in fees is necessary for the USPTO to reach its strategic goals within the time frame outlined in the USPTO FY 2013 President's Budget (Budget). The fee increase in the CPI rulemaking is planned as a bridge to provide resources until the instant section 10 rulemaking (this NPRM) becomes final (at which time the anticipated section 10 fees would supersede the fees in the CPI rulemaking). The proposed rule for the CPI adjustment sets forth particular fees to be adjusted and describes how the adjustment will be calculated based on the fluctuation in the CPI over the twelve months preceding the issuance of the final CPI rule. The aggregate revenue estimates presented in this section 10 proposed rule reflect an estimate of a CPI increase of 1.9 percent, which was the figure included in the Budget and the initial patent fee proposal delivered to the Patent Public Advisory Committee on February 7, 2012. The hypothetical fee rates based on this estimated CPI and used to estimate the aggregate revenue are included in the documents titled *USPTO Section 10 Fee Setting—Aggregate Revenue Estimates* at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1.* The USPTO aggregate revenue estimate will be updated in the section 10 final rule to reflect the actual CPI rates included in the CPI final rule. The individual fee amounts proposed in this rule are not dependent on the final CPI fee rates and may be considered independent of the CPI increase. Except as otherwise noted, the current fees (baseline or status quo) included herein for comparative purposes include the January and February 2012 Proposed Rule fee amounts (as adjusted by the final rule) but not estimated CPI fee amounts.

The parallel rulemakings discussed in this section work in concert to meet the requirements of the AIA and secure the financial resources necessary to advance the Office's goals.

C. Summary of Provisions Impacted by This Action

The Office proposes to set or adjust 352 patent fees—94 apply to large entities (any reference herein to ''large entity'' includes all entities other than small or micro entities), 94 to small entities, 93 to micro entities, and 71 are not entity-specific. Of the 94 large entity fees, 66 are being adjusted, 19 are set at existing fee amounts, and 9 are newly proposed in this rule. Of the 94 small entity fees, 80 are being adjusted, 5 are set at existing fee amounts, and 9 are newly proposed in this rule. There are 93 new micro entity fees being set at a reduction of 75 percent from the large entity fee amounts. Of the 71 fees that are not entity-specific, 6 are either being adjusted or set as new fees in this rule and 65 are set at existing fee amounts.

In all, the routine fees to obtain a patent (i.e., filing, search, examination, publication, and issue fees) will decrease by 22 percent under this NPRM relative to the current fee schedule. Also, despite increases in some fees, applicants who meet the new micro entity definition will pay less than the amount paid for small entity fees under the current fee schedule for 88 percent of the fees eligible for a discount under section 10(b). Additional information describing the adjustments is included in *Part V: Individual Fee Rationale* section of Supplementary Information in this rulemaking.

D. Summary of Costs and Benefits of This Action

The Office prepared a Regulatory Impact Analysis (RIA) to analyze the costs and benefits of this NPRM over a five-year period. This analysis includes a comparison of the proposed fee schedule to the current fee schedule (baseline) (which is defined to include the January and February 2012 Proposed Rules fee amounts, as adjusted by the final rules) and to three other alternatives described in the RIA. The Office considered both monetized and qualitative costs and benefits. Monetized costs and benefits have effects that the Office can express in dollar values. Qualitative costs and benefits have effects that are difficult to express in either dollar or numerical values. The complete RIA is available for review at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1.*

The RIA concluded that the proposed patent fee schedule has the largest net benefit. The incremental net monetized benefit to patent applicants, patent holders, other patent stakeholders, and society of the proposed fee schedule is nearly seven billion dollars (assuming a 7 percent discount rate) for the five-year period. The most significant incremental benefit is the increase in the average value of a patent that stems from a decrease in patent application pendency (the time it takes to have a patent application examined). The Office estimates that total patent application pendency will decrease by 12 months during the time period of this analysis, thereby permitting a patentee to obtain a patent sooner than he or she would have under the Baseline (status quo fee schedule). The proposed fee schedule also has qualitative benefits including fee schedule design benefits and a decrease in uncertainty of patent rights, as discussed below. *See* Table 1.

TABLE 1—PROPOSED PATENT FEE SCHEDULE COSTS AND BENEFITS, CUMULATIVE FY 2013–FY 2017

	Total
Monetized Costs and Benefits—3% Discount Rate (dollars in millions)	
Benefits:	
Increase in private patent value from a decrease in pendency	$6,921
Costs:	
Cost of patent operations	($765)
Lost patent value from a decrease in patent applications	($166)
Net Benefit	$5,990
Monetized Costs and Benefits—7% Discount Rate (dollars in millions)	
Benefits:	
Increase in private patent value from a decrease in pendency	$7,694
Costs:	
Cost of patent operations	($682)
Lost patent value from a decrease in patent applications	($135)
Net Benefit (Cost)	$6,877
Qualitative Costs and Benefits	
Costs:	
No qualitative costs	n/a
Benefit:	
Fee Schedule Design Benefits (Significant, Moderate, Not Significant)	*Moderate*
Decreased Uncertainty Effect (Significant, Moderate, Not Significant)	*Significant*

To estimate the monetized benefits of the proposed fee schedule, the Office considered how the value of a patent would increase under the proposed fee schedule. When patent application pendency decreases, a patentee holds the exclusive right to the invention sooner, which would increase the private value of that patent. Because the outcomes of this proposed rule would decrease patent pendency by 12 months during the time period of the analysis, the Office expects the private patent value will increase, relative to the baseline. This benefit helps to speed the commercialization of new technologies and the jobs they can create. *See* Table 1.

The Office also estimated the incremental increase in the costs of its patent operations to determine the monetized costs of the proposed fee schedule. The most significant incremental costs of patent operations are (1) the increased patent examination capacity to work on the large backlog of patent applications in inventory, thus reducing patent application pendency; and (2) building a three-month patent operating reserve by FY 2017 to support a sustainable funding model. *See* Table 1.

In addition, the Office expects that this proposed rule will result in a short-term reduction in patent applications filed due to the new pricing. The Office estimates that 1.3 percent fewer applications than the number estimated to be filed in the absence of a fee increase will be filed during FY 2013. The Office further estimates that 2.7 percent fewer patent applications will be filed during FY 2014 and 4.0 percent fewer patent applications beginning in FY 2015 as patent filers adjust to the new fees, specifically the increase in the total filing, search, and examination fees for most applicants. However, the Office estimates that patent application filings will return to the same growth rate anticipated in the absence of a fee increase beginning in FY 2016. Overall, the demand for patent application services is generally inelastic and the number of patent applications filed will continue to grow year-over-year. An estimate of the monetized cost to patent applicants, other patent stakeholders, and society associated with this reduction in patent applications filed was also subtracted from the benefit of the increased patent value when estimating the overall net benefit of the proposed fee schedule. *See* Table 1.

When considering the qualitative benefits of the proposed fee schedule, the Office assessed the impact of the rule on two factors: fee schedule design and decreasing uncertainty. First, the design of the proposed fee schedule offers benefits relating to the three policy factors considered for setting individual fees as described in *Part III* of this NPRM, namely *fostering innovation, facilitating the effective administration of the patent system;* and *offering patent prosecution options to applicants.* By maintaining the current fee setting philosophy of keeping front-end fees below the cost of application processing and recovering revenue from back-end fees, the proposed fee schedule continues to *foster innovation* and ease access to the patent system. The fee schedule design continues to offer incentives and disincentives to engage in certain activities that *facilitate the effective administration of the patent system* and help reduce the amount of time it takes to have a patent application examined. For example, application size fees, extensions of time fees, and excess claims fees remain in place to facilitate the prompt conclusion of prosecution of an application. The proposal includes multipart and staged fees for requests for continued examination and appeals, both of which aim to *increase patent prosecution options for applicants.* Second, by decreasing pendency, this action provides the applicant and other potential innovators with greater certainty through clearly defined and an unambiguous scope of patent rights. This increase in certainty and clarity in patent rights has an overall positive impact on the freedom to innovate and the market for technology.

The RIA found that the proposed fee schedule generates the largest net benefit based on the analysis of the costs and benefits of: (a) the proposed fee schedule; (b) the no-action alternative (baseline); and (c) the three other alternatives. Additional details describing the costs and benefits is available in the RIA at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1.*

II. Legal Framework

A. Leahy-Smith America Invents Act—Section 10

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284. Section 10(a) of the Act authorizes the Director of the Office to set or adjust by rule any patent fee established, authorized, or charged under Title 35, U.S.C. for any services performed by, or materials furnished by, the Office. Fees under 35 U.S.C. may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials related to patents, including administrative costs to the Office with respect to such patent operations. *See* 125 Stat. at 316. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) of the Act requires the Director to publish the final fee rule in the **Federal Register** and the Official Gazette of the Patent and Trademark Office at least 45 days before the final fees become effective. Section 10(i) terminates the Director's authority to set or adjust any fee under section 10(a) upon the expiration of the seven-year period that began on September 16, 2011.

B. Small Entity Fee Reduction

Section 10(b) of the AIA requires the Office to reduce by 50 percent the fees for small entities that are set or adjusted under section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

C. Micro Entity Fee Reduction

Section 10(g) of the AIA amends Chapter 11 of Title 35, U.S.C. to add section 123 concerning micro entities. The Act provides that the Office must reduce by 75 percent the fees for micro entities for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The implementing procedures for the provisions of 35 U.S.C. 123 are proposed in a separate rulemaking. *See* 77 FR 31806 (May 30, 2012).

D. Patent Public Advisory Committee Role

The Secretary of Commerce established the Patent Public Advisory Committee (PPAC) under the American Inventors Protection Act of 1999. 35 U.S.C. 5. The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations.

When adopting fees under section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on February 7, 2012, the Director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *http://www.uspto.gov/about/advisory/ppac/*. The PPAC held two public hearings: one in Alexandria, Virginia, on February 15, 2012; and another in Sunnyvale, California, on February 23, 2012. Transcripts of these hearings and comments submitted to the PPAC in writing are available for review at *http://www.uspto.gov/about/advisory/ppac/*. The PPAC is considering public comments from these hearings and will make available to the public a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The PPAC is scheduled to release its report no later than August 2012. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before publishing a final rule.

III. Rulemaking Goals and Strategies

Consistent with the Office's goals and obligations under the AIA, the overall strategy of this rulemaking is to ensure the fee schedule generates sufficient revenue to recover aggregate costs. Another strategy is to set individual fees to further key policy considerations while taking into account the cost of the particular service. As to the strategy of balancing aggregate revenue and aggregate cost, this rule will provide sufficient revenue to implement two significant USPTO goals: (1) Implement a sustainable funding model for operations; and (2) optimize patent timeliness and quality. As to the strategy of setting individual fees to further key policy considerations, the policy factors contemplated are: (1) *Fostering innovation;* (2) *facilitating effective administration of the patent system;* and (3) *offering patent prosecution options to applicants.*

These fee schedule goals and strategies are consistent with strategic goals and objectives detailed in the USPTO 2010–2015 Strategic Plan (Strategic Plan) that is available at *http://www.uspto.gov/about/stratplan/USPTO_2010–2015_Strategic_Plan.pdf*, as amended by Appendix #1 of the Budget, available at *http://www.uspto.gov/about/stratplan/budget/fy13pbr.pdf*) (collectively referred to herein as ''Strategic Goals''). The Strategic Plan defines the USPTO's missions and long-term goals and presents the actions the Office will take to realize those goals. The significant actions the Office describes in the Strategic Plan that are specific to the goals of this rulemaking are implementing a sustainable funding model, reducing the patent application backlog and pendency, and improving patent quality and IT.

Likewise, the fee schedule goals and strategies also support the *Strategy for American Innovation*—an Administration initiative first released in September 2009 and updated in February 2011 that is available at *http://www.whitehouse.gov/innovation/strategy*. The *Strategy for American Innovation* recognizes innovation as the foundation of American economic growth and national competitiveness. Economic growth in advanced economies like the United States' is driven by creating new and better ways of producing goods and services, a process that triggers new and productive investments, which is the cornerstone of economic growth. Achieving the *Strategy for American Innovation* depends, in part, on the USPTO's success in reducing the patent application backlog (the number of applications awaiting examiner action) and pendency (the time it takes to have a patent application examined)—both of which stall the delivery of innovative goods and services to market and impede economic growth and the creation of high-paying jobs. This rule positions the USPTO to reduce the backlog and pendency.

A. Ensure the Overall Fee Schedule Generates Sufficient Revenue to Recover Aggregate Cost

The first fee setting strategy is to ensure that the fee schedule generates sufficient multi-year aggregate revenue to recover the aggregate cost to maintain

USPTO operations and accomplish USPTO strategic goals. Two overriding principles, found in the Strategic Plan, motivate the Office here: (1) Operating within a more sustainable funding model than in the past to avoid disruptions caused by fluctuations in the economy; and (2) accomplishing strategic goals, including the imperatives of reducing the patent application backlog and pendency. Each principle is discussed in greater detail below.

1. Implement a Sustainable Funding Model for Operations

As explained in the Strategic Plan, the Office's objective of implementing a sustainable funding model for operations will facilitate USPTO's long-term operational and financial planning and enable the Office to adapt to changes in the economy and in operational workload.

Since 1982, patent fees that generate most of the patent revenue (e.g., filing, search, examination, issue, and maintenance fees) have been set by statute, and the Office could adjust these fees only to reflect changes in the CPI for All Urban Consumers, as determined by the Secretary of Labor. Because these fees were set by statute, the USPTO could not realign or adjust them to quickly and effectively respond to market demand or changes in processing costs other than for the CPI. Over the years, these constraints led to funding variations and shortfalls. Section 10 of the AIA changed this fee adjustment model and authorizes the USPTO to set or adjust patent fees within the regulatory process so that the Office will be better able to respond to its rapidly growing workload.

The Budget delineates the annual plans and prospective aggregate costs to execute the initiatives in the Strategic Plan. One of these costs is the creation of a three-month patent operating reserve to allow effective management of the U.S. patent system and responsiveness to changes in the economy, unanticipated production workload, and revenue changes, while maintaining operations and effectuating long-term strategies. The Office evaluated the optimal size of the operating reserve by examining specific risk factors. There are two main factors that create a risk of volatility in patent operations—spending levels and revenue streams. After reviewing other organizations' operating reserves, the Office found that a fully fee-funded organization such as the USPTO should maintain a minimum of a three-month operating reserve. The fees proposed here will gradually build the three-month operating reserve. The USPTO will assess the patent operating reserve balance against its target balance annually and, at least every two years, will evaluate whether the target balance continues to be sufficient to provide the stability in funding needed by the Office. If the proposed fee structure is implemented, then the USPTO anticipates that the three-month patent operating reserve would be achieved in FY 2017.

The proposed fees will provide the USPTO with sufficient aggregate revenue to recover the aggregate cost to operate the Office while improving the patent system. During FY 2013, patent operations will cost $2.604 billion (including an offset to spending from other income of $18 million and a deposit in the operating reserve of $73 million). The proposed fee schedule should generate $2.604 billion in aggregate revenue to offset these costs. Once the Office transitions to the proposed fee levels, it estimates an additional $11.8 billion in aggregate revenue will be generated from FY 2014 through FY 2017 to recover the total aggregate cost over the same time period—$11.2 billion in operating costs and $0.6 billion in a three-month operating reserve. (*See* Table 3 in *Part IV,* Step 2 of this NPRM.)

Under the new fee structure, as in the past, the Office will continue to regularly review its operating budgets and long-range plans to ensure the USPTO uses patent fees prudently.

2. Optimize Patent Quality and Timeliness

The Office developed the strategic goal of optimizing patent quality and timeliness in response to intellectual property (IP) community feedback, the *Strategy for American Innovation,* and in recognition that a sound, efficient, and effective IP system is essential for technological innovation and for patent holders to reap the benefits of patent protection.

Over the past several years, a steady increase in incoming patent applications and insufficient patent examiner hiring due to multi-year funding shortfalls has led to a large patent application backlog (the number of applications awaiting examiner action) and a long patent application pendency (the time it takes to have a patent application examined). Reducing pendency increases the private value of a patent because the more quickly a patent is granted, the more quickly the holder can commercialize the innovation. Shorter pendency also allows for earlier disclosure of the scope of the patent, which reduces uncertainty for the patentee, potential competitors, and additional innovators regarding patent rights and the validity of the patentees' claims.

To reduce the backlog and pendency, the USPTO must examine significantly more patent applications than it receives each year for the next several years. Bringing the applications in the backlog down to a manageable level, while at the same time keeping pace with the new patent applications expected to be filed each year, will require that the Office collect more aggregate revenue than it estimates that it will collect at existing fee rates. The Office needs this additional revenue to hire additional patent examiners, improve the patent business IT capability and infrastructure, and implement other programs to optimize the timeliness of patent examination. This proposed rulemaking will result in an average first action patent pendency of 10 months in FY 2015, an average total pendency of 20 months in FY 2016, and a reduced patent application backlog and inventory of approximately 350,000 patent applications by FY 2015. This would be a significant improvement over the 22.6 months and 34.1 months for average first action patent pendency and average total pendency, respectively, as of March 2012. Under this proposed rule, the patent application backlog is also expected to decrease significantly from the 644,775 applications in inventory as of March 2012.

In addition to timeliness of patent protection, the quality of application review is critical to ensure the value of an issued patent. Quality issuance of patents provides certainty in the market and allows businesses and innovators to make informed and timely decisions on product and service development. Under the proposed action, the Office will continue to improve patent quality through comprehensive training for new and experienced examiners, an expanded and enhanced ombudsmen program to help resolve questions about applications, improved hiring processes, and guidelines for examiners to address clarity issues in patent applications—all actions intended to place quality at the top of USPTO's priorities. The Office will continue to encourage interviews to help clarify allowable subject matter early in the examination process, and to encourage interviews later in prosecution to resolve outstanding issues. The Office will also continue to reengineer the examination process, and to monitor and measure examination using a comprehensive set of metrics that analyze the quality of the entire process.

In addition to direct improvements to patent quality and timeliness, the USPTO's development and implementation of the patent end-to-end processing system using the revenue generated from the proposed fee structure will also improve the efficiency of the patent system. The IT architecture and systems in place currently are obsolete and difficult to maintain, leaving the USPTO highly vulnerable to disruptions in patent operations. Additionally, the current IT systems require patent employees and external stakeholders to perform labor-intensive business processes manually, decreasing the efficiency of the patent system. This proposed rule provides the Office with sufficient revenue to modernize its IT systems so that the majority of applications are submitted, handled, and prosecuted electronically. Improved automation will benefit both the Office and innovation community.

B. Set Individual Fees to Further Key Policy Considerations, While Taking Into Account the Costs of the Particular Service

The second fee setting strategy is to set individual fees to further key policy considerations, while taking into account the cost of the associated service or activity. The proposed fee schedule recovers the aggregate cost to the Office, while also considering the individual cost of each service provided. This includes consideration that some applicants may use particular services in a much more costly manner than other applicants (e.g., patent applications cost more to process when more claims are filed). The proposed fee schedule considers three key policy factors: (1) *Fostering innovation;* (2) *facilitating effective administration of the patent system;* and (3) *offering patent prosecution options to applicants.* The Office is focusing on these policy factors because each promotes particular aspects of the U.S. patent system. *Fostering innovation* is an important policy factor to ensure that access to the U.S. patent system is without significant barriers to entry and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity. *Facilitating effective administration of the patent system* is important to influence efficient patent prosecution, resulting in compact prosecution and reduction in the time it takes to obtain a patent. In addition, the Office recognizes that patent prosecution is not a one-size-fits-all process and therefore, where feasible, the Office endeavors to fulfill its third policy factor of *offering patent prosecution options to applicants.* Each of these policy factors is discussed in greater detail below.

1. Fostering Innovation

To encourage innovators to take advantage of patent protection, the Office proposes to set basic ''front-end'' fees (e.g., filing, search, and examination) below the actual cost of carrying out these activities. Likewise, consistent with the requirements in the Act, the Office proposes providing fee reductions for small and micro entity innovators to facilitate access to the patent system. Setting front-end and small and micro entity fees below cost requires, however, that other fees be set above cost. To that end, the Office proposes to set basic ''back-end'' fees (e.g., issue and maintenance) in excess of costs to recoup revenue not collected by front-end and small and micro entity fees. Charging higher back-end fees also fosters innovation and benefits the overall patent system when patent owners more closely assess the expected value of an existing patent over its life, and determine whether to pay maintenance fees to keep the patent in force. Expiration of a patent makes the subject matter of the patent available in the public domain for subsequent commercialization. Determining the appropriate balance between front-end and back-end fees is a critical component of aligning the Office's costs and revenues.

2. Facilitating Effective Administration of the Patent System

The proposed fee structure helps facilitate effective administration of the patent system by encouraging applicants or patent holders to engage in certain activities that facilitate an effective patent system. In particular, setting fees at the particular levels proposed here will: (1) Encourage the submission of applications or other actions that enable examiners to provide prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecution of an application, which results in pendency reduction, faster dissemination of information, and certainty in patented inventions; and (3) help recover the additional costs imposed by some applicants' more intensive use of certain services that strain the patent system.

3. Offering Patent Prosecution Options to Applicants

The proposed fee schedule also provides applicants with flexible and cost-effective options for seeking patent protection. For example, in September 2011, the Office implemented prioritized examination for utility and plant applications, as specified in provisions of section 11(h) of the Act, to offer applicants the choice of a fast track examination for an additional fee. (*See* Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures, 76 FR 6369 (Feb. 4, 2011)). In this proposed rule, the Office proposes multipart and staged fees for requests for continued examination (RCE) and appeals. The Office proposes to set the RCE fee in two parts. The first RCE fee would be set below cost to facilitate access to the service and in recognition that most applicants using RCEs only require one per application. The fee for the second and subsequent requests would be set at cost recovery as an option for those who require multiple RCEs. Likewise, the staging of appeal fees allows applicants to pay less in situations when an application is either allowed or reopened before being forwarded to the Board of Patent Appeals and Interferences (BPAI) (to become the Patent Trial and Appeal Board (PTAB) on September 16, 2012). This *patent prosecution option* allows applicants to make critical decisions at multiple points in the patent prosecution process.

Summary of Rationale and Purpose of the Proposed Rulemaking

The patent fee schedule proposed here will produce aggregate revenues to recover the aggregate costs of the USPTO, including for its management of strategic goals, objectives, and initiatives in FY 2013 and beyond. Using the two Strategic Plan goals (implementing a sustainable funding model for operations and optimizing patent quality and timeliness) as a foundation, the proposed rule would provide sufficient aggregate revenue to recover the aggregate cost of patent operations, including implementing a sustainable funding model, reducing the current patent application backlog, decreasing patent pendency, improving patent quality, and upgrading the patent business IT capability and infrastructure. Additionally, in this rule, the Office considers each individual fee by evaluating its historical cost and considering the policy factors of *fostering innovation, facilitating the effective administration of the patent system,* and *offering patent prosecution options to applicants.*

IV. Fee Setting Methodology

There are three primary steps involved in developing the proposed fees:

Step 1: Determine the prospective aggregate costs of patent operations over the five-year period, including the cost of implementing new initiatives to achieve strategic goals and objectives.

Step 2: Calculate the prospective revenue streams derived from the individual fee amounts (from Step 3) that will collectively recover the prospective aggregate cost over the five-year period.

Step 3: Set or adjust individual fee amounts to collectively (through executing Step 2) recover projected aggregate cost over the five-year period, while furthering key policy considerations.

These three steps are iterative and interrelated. Following is a description of how the USPTO carries out these three steps.

Step 1: Determine Prospective Aggregate Costs

Calculating aggregate costs is accomplished primarily through the routine USPTO budget formulation process. The Budget is a five-year plan (that the Office prepares annually) for carrying out base programs and implementing the strategic goals and objectives. The first activity performed to determine prospective aggregate cost is to project the level of demand for patent products and services. Demand for products and services depends on many factors, including domestic and global economic activity. The USPTO also takes into account overseas patenting activities, policies and legislation, and known process efficiencies. Because examination costs are 70 percent of the total patent operating cost, a primary production workload driver is the number of patent application filings (i.e., incoming work to the Office). The Office looks at indicators such as the expected growth in Real Gross Domestic Product (RGDP), the leading indicator to incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis (*www.bea.gov*), and is forecasted each February by the Office of Management and Budget (OMB) (*www.omb.gov*) in the Economic and Budget Analyses section of the Analytical Perspectives, and each January by the Congressional Budget Office (CBO) (*www.cbo.gov*) in the Budget and Economic Outlook. A description of the Office's methodology for using RGDP can be found at pages 36 and 37 of the Budget. The expected change in the required production workload must then be compared to the current examination production capacity to determine any required staffing and operating cost (e.g., salaries, workload processing contracts, and printing) adjustments. The Office uses a patent pendency model that estimates patent production output based on actual historical data and input assumptions, such as incoming patent applications and overtime hours. An overview of the model, including a description of inputs, outputs, key data relationships, and a simulation tool is available at *http://www.uspto.gov/patents/stats/patent_pend_model.jsp.*

The second activity is to calculate the aggregate costs to execute the requirements. In developing its Budget, the Office first looks at the cost of status quo operations (the base requirements). The base requirements are adjusted for anticipated pay raises and inflationary increases for the periods FY 2013–FY 2017 (detailed calculations and assumptions for this adjustment to base are available in Exhibit 8 and Exhibit 9 of the Budget). The Office then estimates the prospective cost for expected changes in production workload and new initiatives over the same period of time (refer to ''Program Changes by Sub-Activity'' sections of the Budget). The Office reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon (*see* page 9 of the Budget). Finally, the Office estimates its three-month target operating reserve level based on this aggregate cost calculation for year to determine if operating reserve adjustments are necessary.

The Budget identifies that during FY 2013, patent operations will cost $2.549 billion (*see* page 31 of the Budget), including $1.733 billion for patent examination activities; $362 million for IT systems, support, and infrastructure contributing to patent operations; $61 million for activities related to patent appeals and the new AIA *inter partes* dispute actions; $30 million for activities related to IP protection, policy, and enforcement; and $363 million for general support costs necessary for patent operations (e.g., rent, utilities, legal, financial, human resources, and other administrative services). In addition, the Office estimates collecting $18 million in other income associated with reimbursable agreements (offsets to spending) and depositing $73 million during FY 2013 toward the cost of building the patent operating reserve to sustain operations. The operating reserve estimate in this NPRM is different than the estimate included in the Budget. The estimate included in the Budget is consistent with the estimate included in the initial proposal to PPAC on February 7, 2012, and has been reduced in this NPRM in response to public feedback provided to the PPAC. A detailed description of the operating requirements and related aggregate cost is located in the Budget. Table 2 below provides key underlying production workload projections and assumptions from the Budget used to calculate aggregate cost. Table 3 presents the total budgetary requirements (prospective aggregate cost) for FY 2013 through FY 2017.

TABLE 2—PATENT PRODUCTION WORKLOAD PROJECTIONS—FY 2013–FY 2017

Utility, plant, and reissue (UPR)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Applications*	565,300	599,200	632,200	666,900	700,300
Growth Rate**	6.0%	6.0%	5.5%	5.5%	5.0%
Production Units	620,600	671,900	694,200	645,200	656,200
End of Year Backlog	529,100	421,600	329,500	328,400	358,000
Examination Capacity**	8,700	8,600	8,300	8,300	8,200
Performance Measures (UPR)					
Avg. First Action Pendency (Months)	16.9	15.9	10.1	9.4	9.4
Avg. Total Pendency (Months)	30.1	24.6	22.9	18.3	18.1

* In this table, the patent application filing data includes requests for continued examination (RCEs).

** In this table, demand for patent examination services, which is used to calculate aggregate cost in the FY 2013 President's Budget, is not adjusted for price elasticity.

TABLE 3—ESTIMATED ANNUAL AGGREGATE COSTS AND PROPOSED FEE SCHEDULE AGGREGATE REVENUES

	(Dollars in millions)					
	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Aggregate Cost Estimate						
Planned Operating Requirements		$2,549	$2,702	$2,809	$2,846	$2,945
Less Other Income*		(18)	(18)	(18)	(18)	(18)
Net Operating Requirements		2,531	2,684	2,791	2,828	2,927
Planned Deposit in Operating Reserve		73	200	143	125	95
Total Aggregate Cost Estimate		*2,604*	*2,884*	*2,934*	*2,953*	*3,022*
Aggregate Revenue Estimate**		*2,604*	*2,884*	*2,934*	*2,953*	*3,022*
Cumulative Operating Reserve Balance						
Target Operating Reserve		637	676	702	712	736
Operating Reserve Ending Balance	$121	194	394	537	662	757
Over/(Under) Target Balance		(443)	(282)	(165)	(50)	21

*The Office collects other income associated with reimbursable agreements (offsets to spending) and recoveries of funds obligated in prior years in the amount of approximately $18 million each year.

**The proposed fee schedule will generate less revenue compared to the FY 2013 President's Budget in an effort to slow the growth of the operating reserve over the next five years.

Step 2: Calculate Prospective Aggregate Revenue

As described in ''*Step 1,*'' the USPTO's FY 2013 requirements-based budget includes the aggregate prospective cost of planned production, new initiatives, and an operating reserve required for the Office to realize its strategic goals and objectives for the next five years. The aggregate prospective cost becomes the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To calculate the aggregate revenue estimates, the Office first analyzes relevant factors and indicators to calculate or determine prospective fee workload (e.g., number of applications and requests for services and products), growth, and resulting fee workload volumes (quantities) for the five-year planning horizon. Economic activity is an important consideration when developing workload and revenue forecasts for the USPTO's products and services because economic conditions affect patenting activity, as most recently exhibited in the recession of 2009 when incoming workloads and renewal rates declined.

The Office considers economic activity when developing fee workloads and aggregate revenue forecasts for its products and services. Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. The most relevant economic indicator that the Office uses is the RGDP, which is the broadest measure of economic activity and is anticipated to grow approximately three percent for FY 2013 based on OMB and CBO estimates.

These indicators correlate with patent application filings, which are a key driver of patent fees. Economic indicators also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the Office considers other influential factors including overseas activity, policies and legislation, process efficiencies, and anticipated applicant behavior.

Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity, which for the purpose of this action means how sensitive applicants and patentees are to fee amounts or price changes. If elasticity is low enough (i.e., demand is *inelastic*), when fees increase, patent activities will decrease only slightly in response thereto, and overall revenues will still increase. Conversely, if elasticity is high enough (i.e., demand is *elastic*), when fees increase, patenting activities will decrease significantly enough in response thereto such that overall revenues will decrease. When developing fee forecasts, the Office accounts for how applicant behavior will change at different fee amounts projected for the various patent services. Additional detail about the Office's elasticity estimates is available in ''*USPTO Section 10 Fee Setting—Description of Elasticity Estimates,*'' at *http://www.uspto.gov/aia_implementation/fees.jsp.* Some of the information on which the Office based its elasticity estimates are copyrighted materials and are available for inspection at the USPTO.

Micro Entity Applicants

The introduction of a new class of applicants, called micro entities, requires a change to aggregate revenue estimations, and the Office has refined its workload and fee collection estimates to include this new applicant class. *See* 35 U.S.C. 123; *see* also Changes to Implement Micro Entity Status for Paying Patent Fees, 77 FR 31806 (May 30, 2012) . 35 U.S.C. 123, which sets forth how an applicant can claim the micro entity discount, provides two bases under which an applicant may establish micro entity status.

First, section 123(a) provides that the term ''micro entity'' means an applicant who makes a certification that the applicant: (1) Qualifies as a small entity as defined in 37 CFR 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income exceeding three times the median household income for that preceding calendar year; and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that had a gross income exceeding the income limit described in (3).

Second, 35 U.S.C. 123(d) provides that a micro entity shall also include an applicant who certifies that: (1) The applicant's employer, from which the applicant obtains the majority of the

applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

The Office estimates that when micro entity discounts on patent fees are available, 31 percent of small entity applications will be micro entity applications, under the criteria set forth in section 123(a) and (d). In making this estimate, the Office considered several factors, including historical data on patents granted. The Office began with patent grant data, because the best available biographic data on applicant type (e.g., independent inventor and domestic universities) comes from patent grant data in the Office's database.

The Office first estimated the number of individuals who were granted patents in FY 2011. There were 221,350 utility patents granted in FY 2011 as reported in the *FY 2011 USPTO Performance and Accountability Report* (*PAR*). The *PAR* is available for review at *http://www.uspto.gov/about/stratplan/ar/2011/index.jsp.* The Office's Patent Technology Monitoring Team (PTMT) provides data showing the split between domestic and foreign patent grants. (It should be noted that PTMT's data is based on the calendar year not the fiscal year.) PTMT's data is available at *http://www.uspto.gov/web/offices/ac/ido/oeip/taf/all_tech.htm#PartA1_1b.* From this data, the Office found that 5.0 percent of utility patents granted in FY 2011 were granted to individuals in the U.S. and 1.9 percent were granted to individuals from other countries, where the individuals were not listed in the USPTO database as associated with a company. These individuals would likely meet the criteria under section 123(a)(1) (small entity status). Using this information, the Office estimates that individuals in the U.S. received 11,068 utility patents (221,350 times 5.0 percent) in FY 2011, and that individuals from other countries received 4,206 utility patents (221,350 times 1.9 percent). In total, the Office estimates that 15,274 (11,068 plus 4,206) patents were granted to individuals in FY 2011.

Concerning the application threshold in 35 U.S.C. 123(a)(2), the Office's Patent Application Locating and Monitoring (PALM) database reports that 62 percent of both foreign and domestic small entity applicants filed fewer than 5 applications in FY 2009. As stated above, an estimated 15,274 patent grants were to individuals both domestic (11,068) and foreign (4,206). Using this information, the Office estimates that 6,862 (11,068 times 62 percent) patents will be granted to domestic applicants who meet the thresholds for micro entity status set forth in sections 123(a)(1) and 123(a)(2), while 2,608 (4,206 times 62 percent) patents will be granted to foreign applicants who meet the same thresholds.

Concerning the income threshold in 35 U.S.C. 123(a)(3), the median household income for calendar year (CY) 2010 (the year most recently reported by the Bureau of the Census) was $49,445. *See Income, Poverty, and Health Insurance Coverage in the United States: 2010,* at 5 and 33 (Table A–1) (Sept. 2011) *available at http://www.census.gov/prod/2011pubs/p60–239.pdf.* (The Office will indicate conspicuously on its Web site the median household income reported by the Bureau of the Census and the income level that is three times the median household income for the calendar year most recently reported.) Thus, the income level specified in 35 U.S.C. 1.29(a)(3) and (a)(4) (three times the median household income) is $148,335.

The Internal Revenue Service (IRS) records show that in 2009 about 97 percent of individuals (as proxied by the total number of IRS form filings) reported adjusted gross income of less than $200,000, and about 87 percent of individuals reported adjusted gross income of less than $100,000. *See* Table 1.1 at: *http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96981,00.html.* Using this information, the Office estimates that 6,656 (6,862 times 97 percent) of patents granted to individuals from the U.S. will be for individuals under the gross income threshold of the micro entity definition ($148,335 for CY 2010). The Office uses 97 percent as the best available estimate of the maximum number of individuals who satisfy the income limit. Median household income and gross income levels are not readily available for the country of origin for all foreign individuals. Therefore, the Office conservatively estimates that all foreign individuals will qualify for micro entity fee reductions, and income should not limit their eligibility. Using the best available data, as presented above, the Office estimates that the total number of individuals who meet the thresholds set forth in 123(a)(1), (a)(2), and (a)(3) is 9,264 (6,656 from the U.S. and 2,608 foreign).

The 9,264 figure represents a reasonable approximation of the number of patents granted annually to persons who would qualify as micro entities under section 123(a). There is no data available to indicate how many persons would be excluded under section 123(a)(4). However, the Office's approach with the other components of section 123(a) is sufficiently conservative to mitigate the risks of not capturing this population. Likewise, while a small company could qualify as a micro entity under section 123(a), the above calculation of individuals represents a reasonable overall approximation because the estimate of affected individuals is sufficiently conservative.

Turning to 35 U.S.C. 123(d), the most recent data available on university patent grants is from CY 2008. Reviewing the data from CY 2001–CY 2008, the Office estimates that domestic universities account for approximately 1.9 percent of all patent grants. The Office is using this figure as a reasonable approximation for the number of micro entity applicants expected under section 123(d), which covers applicants who are employed by universities or who have assigned their invention to a university. Applying this information to FY 2011, the Office estimates that universities received 4,206 (221,350 times 1.9 percent) of the patents granted in FY 2011. The data on university patent grants is available at: *http://www.uspto.gov/web/offices/ac/ido/oeip/taf/univ/asgn/table_1_2008.htm.*

To combine 123(a) and 123(d), the Office adds the estimated number of patents granted that could meet the micro entity definition for individuals (9,264) and for university employees (4,206) to obtain a total of 13,470 patent grants. The Office divides 13,470 micro entity patents by the 43,827 small entity patents in FY 2011 (per the Office's PALM database) to calculate that approximately 31 percent of small entity patents will be micro entity patents. The Office expects a uniform distribution of micro entities across all application types. No data exists to suggest otherwise. Likewise, the Office applies the 31 percent estimate to both filings and grants because it expects a uniform distribution of micro entities among both applicants and patentees, and no data exists to suggest otherwise. Thus, the Office estimates that 31 percent of all small entity applicants will qualify as micro entity applicants.

In recent years, small entity applicants made up approximately 25 percent of utility filings and 20 percent of utility patent grants (per the PALM

database). Given that utility filings are the largest category of application types, for forecasting purposes, the Office uses utility filing data as representative of the universe of patent application filings. Applying the 31 percent estimate for the number of micro entities, the Office estimates that micro entities will account for 7.8 percent (25 percent times 31 percent) of all filings, and 6.2 percent (20 percent times 31 percent) of all grants.

Aggregate Revenue Estimate Ranges

To calculate aggregate revenue, the USPTO prepares a high-to-low range of fee collection estimates that includes a +/− 5 outer bounds to account for: the inherent uncertainty, sensitivity, and volatility of predicting fluctuations in the economy and market environment; interpreting policy and process efficiencies; and developing fee workload and fee collection estimates from assumptions. The Office used 5 percent because historically the Office's actual revenue collections have typically been within 5 percent of the projected revenue. Additional detail about the Office's aggregate revenue, including projected workloads by fee, is available in ''*USPTO Section 10 Fee Setting—Aggregate Revenue Estimates Alternative 1: Proposed Alternative—Set and Adjust Section 10 Fees''* available at *http://www.uspto.gov/aia_implementation/fees.jsp.*

Summary

Patent fees are collected for patent related services and products at different points in time within the patent application examination process and over the life of the pending patent application and granted patent. Approximately half of all patent fee collections are from issue and maintenance fees, which subsidize filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections, because fewer patent application filings means the Office collects fewer fees to devote to production-related costs, such as additional examining staff and overtime. The resulting reduction in production activities creates an out-year revenue impact because less production output in one year results in fewer issue and maintenance fee payments in future years.

The USPTO's five-year estimated aggregate patent fee revenue (*see* ''Aggregate Revenue Estimate'' in Table 3) is based on the number of patent applications it expects to receive for a given fiscal year, work it expects to process in a given fiscal year (an indicator for workload of patent issue fees), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the Office adjusts individual fees up or down based on cost and policy decisions (*see Step 3: Set Specific Fee Amounts*), estimates the effective dates of new fee rates, and then multiplies the resulting fees by appropriate workload volumes to calculate a revenue estimate for each fee. To calculate the aggregate revenue, the Office assumes that all new fee rates, except for changes to sections 1.18(a) through (d) (patent issue and publication fees) and 1.21(h)(1) and 1.21(h)(2) (recording patent assignments), would be effective March 1, 2013. Fee changes for sections 1.18(a) through (d) (patent issue and publication fees) and 1.21(h)(1) and 1.21(h)(2) (recording patent assignments) are assumed to become effective on January 1, 2014. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (*see* Table 3).

Step 3: Set Specific Fee Amounts

Once the Office finalizes the annual requirements and aggregate prospective costs for a given year during the budget formulation process, the Office sets specific fee amounts that, together, will derive the aggregate revenue required to recover the estimated aggregate prospective costs during that time frame. Calculating individual fees is an iterative process that encompasses many variables. One variable that USPTO considers to inform fee setting is the historical cost estimates associated with individual fees. The Office's Activity-Based Information (ABI) provides historical cost for an organization's activities and outputs by individual fee using the activity-based costing (ABC) methodology. ABC is commonly used for fee setting throughout the Federal Government. Additional information about the methodology, including the cost components related to respective fees, is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1* in the document titled ''*USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology.''* The USPTO provides data for FY 2009–FY 2011 because the Office finds that reviewing the trend of ABI historical cost information is the most useful way to inform fee setting. The underlying ABI data are available for public inspection at the USPTO.

When the Office implements a new process or service, historical ABI data is typically not available. However, the Office will use the historical cost of a similar process or procedure as a starting point to calculate the cost of a new activity or service. For example, as described in the proposed rulemaking, Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act, 77 FR 3666 (Jan. 25, 2012), the Office used the ABI historical cost for *ex parte* reexamination procedures as a starting point for calculating the prospective cost to implement the new supplemental examination procedures.

In other cases, ABI historical cost information related to similar processes are not available, and the Office estimates cost by calculating the resources necessary to execute the new process. To do so, the Office estimates the amount of time (in hours) and necessary skill level to complete an activity. The USPTO then multiplies the estimated amount of time by the hourly wage(s) of the persons required at each skill level and adds the administrative and indirect cost rates (derived from ABI historical cost data) to this base cost estimate to calculate the full cost of the activity. One-time costs, such as IT, training, or facilities, are added to the full cost estimate to obtain the total cost of providing the new process or service. Lastly, the USPTO applies a rate of inflation to estimate the prospective unit cost. For example, the Office used this methodology to calculate the costs associated with the new *inter partes* and post grant review processes. (*See* 77 FR 6879, (Feb. 9, 2012).

This cost data serves as a point of reference for setting individual fee amounts. The USPTO also uses various policy factors discussed in the Rulemaking Goals and Strategies section of this NPRM to inform fee setting. Fees are set to allow the Office to recover its aggregate costs, while furthering key policy considerations. The following section describes the rationale for setting fee rates at specific amounts.

V. Individual Fee Rationale

The Office projects the aggregate revenue generated from the proposed patent fees will recover the prospective aggregate cost of its patent operations. However, each individual proposed fee is not necessarily set equal to the estimated cost of performing the activities related to the fee. Instead, as described in *Part III. Rulemaking Goals and Strategies,* some of the proposed fees are set to balance several key policy factors: *fostering innovation, facilitating effective administration of the patent*

system, and *offering patent prosecution options to applicants.* As also described in *Part III,* executing these policy factors in the patent fee schedule is consistent with the *Strategy for American Innovation* and the goals and objectives outlined in the Strategic Plan. Once the key policy factors are considered, fees are set at, above, or below individual cost recovery levels for the activity or service provided.

For the purpose of discussing the changes in this rule, the rationale for proposing to set or adjust individual fees are grouped into two major categories: (1) Fees where large entity amounts changed from the current amount by greater than plus or minus 5 percent and 10 dollars (described below in section (A)); and (2) fees where large entity amounts stayed the same or did *not* change by greater than plus or minus 5 percent and 10 dollars (described below in section (B). The purpose of the categorization is to identify large fee changes for the reader and provide an individual fee rationale for such changes. The categorization is based on changes in large entity fee amounts because percentage changes for small entity fees that are in place today would be the same as the percentage change for the large entity, and the dollar change would be half of that of the large entity change. Therefore, there will never be an instance where the small entity fee change meets the greater than plus or minus 5 percent and 10 dollars criteria and a large entity does not.

The ''*USPTO Section 10 Fee Setting—Table of Patent Fee Changes''* is available at *http://www.uspto.gov/aia_implementation/fees.jsp* and the tables in *Part VI.* The table of patent fee changes includes the current fees for large and small entities and the proposed fees for large, small, and micro entities with the dollar and percent changes in large entity fees and the FY 2011, FY 2010, and FY 2009 unit costs. The Discussion of Specific Rules in this rulemaking contains a complete listing of fees that are set or adjusted in the proposed patent fee schedule.

A. Discounts for Small and Micro Entity Applicants

The fees described below include discounts for small and micro entity applicants as required by section 10. The current small entity discount scheme will change when fees are set in accordance with section 10. That is, section 10(a) provides that the USPTO can set or adjust ''any fee established, authorized or charged under'' Title 35, U.S.C. In turn, section 10(b) of the Act provides that fees set or adjusted under section 10(a) authority for ''filing, searching, examining, issuing, appealing, and maintaining patent applications and patents'' will be reduced by 50 percent for small entities and 75 percent for micro entities. A small entity is defined as currently set forth in 35 U.S.C. 41(h)(1), and a micro entity is defined in section 123.

Currently, the small entity discount is only available for statutory fees provided under sections 41(a) and (b). Section 10(b) extends the discount to some patent fees not contained in section 41(a) and (b). Thus, the Office will apply the discount to a number of fees that currently do not receive the small entity discount. Only one fee for which a small entity discount is currently offered will be ineligible for that discount under the proposed fee schedule (the fee for a statutory disclaimer under 37 CFR 1.20(d), which is currently $160 for a large entity and $80 for a small entity), because the particular fee does not fall under one of the six categories of patent fees set forth in section 10(b).

Additionally, the new contested case proceedings created under the Act (*inter partes* review, post grant review, covered business method patent review, and derivation proceedings) are trial services, not appeals. As such, the fees for these services do not fall under any of the six categories under section 10(b), and therefore are not eligible for discounts. Appeals before the BPAI involve contests to an examiner's findings. The new trial services, however, determine whether a patent should have been granted. They involve discovery, including cross-examination of witnesses. Further, the AIA amends sections of Title 35 that specifically reference ''appeals,'' while separately discussing *inter partes* review, post grant review, and derivation proceedings, highlighting that these new services are not appeals. *See* section 7 of the AIA (amending 35 U.S.C. 6).

B. Fees With Proposed Changes of Greater Than Plus or Minus 5 Percent and 10 Dollars

For those fees that are proposed to change by greater than plus or minus 5 percent and 10 dollars, the individual fee rationale discussion is divided into four general subcategories: (1) Fees to be set at cost recovery; (2) fees to be set below cost recovery; (3) fees to be set above cost recovery; and (4) fees that are not set using cost data as an indicator. Table 4 contains a summary of the individual fees that are discussed in each of the subcategories referenced above.

As discussed above, for purposes of comparing amounts in the individual fee rationale discussion, the Office has also included the fees proposed previously using the USPTO's existing 35 U.S.C. 41(d)(2) fee authority in the baseline (status quo). *See* 77 FR 982 (Jan. 6, 2012), 77 FR 3666 (Jan. 25, 2012), 77 FR 6879 (Feb. 9, 2012), 77 FR 7028 (Feb. 10, 2012), and 77 FR 7060 (Feb. 10, 2012). The fees proposed in these January and February 2012 Proposed Rules (as adjusted by the final rules) are included in the ''current'' fee column and denoted with (*). This NPRM does not reopen the comment period for any of the January and February 2012 Proposed Rules. It is anticipated that those rules will be finalized in the coming months. This NPRM establishes a different comment period for setting or adjusting all patent fees under section 10 of the AIA. The Office anticipates finalizing this rulemaking after the January and February 2012 Proposed Rules are finalized.

In addition, for purposes of discussion within this section, where new micro entity fees are proposed, it is expected that an applicant or patent holder would have paid the current small entity fee (or large entity in the event there is not a small entity fee) and dollar and percent changes are calculated from the current small entity fee amount (or large entity fee, where applicable).

It should be noted that the ''Utility Search Fee'' listed below does not meet the ''change by greater than plus or minus 5 percent and 10 dollars'' threshold, but is nonetheless included in the discussion for comparison of total filing, search, and examination fees.

TABLE 4—PATENT FEES PROPOSED TO CHANGE

[By greater than plus or minus 5 percent and 10 dollars]

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
(1) Fees To Be Set at Cost Recovery				
Request for Prioritized Examination	$4,800 ($2,400) [N/A]	$4,000 ($2,000) [$1,000]	−$800 (−$400) [−$1,400]	−17% (−17%) [−58%]
Second and Subsequent RCEs (NEW)	$930 ($465) [N/A]	$1,700 ($850) [$425]	+$770 (+$385) [−$40]	+83% (+83%) [−9%]
(2) Fees To Be Set Below Cost Recovery				
Basic Filing Fee—Utility	$380 ($190) [N/A]	$280 ($140) [$70]	−$100 (−$50) [−$120]	−26% (−26%) [−63%]
Utility Search Fee	$620 ($310) [N/A]	$600 ($300) [$150]	−$20 (−$10) [−$160]	−3% (−3%) [−52%]
Utility Examination Fee	$250 ($125) [N/A]	$720 ($360) [$180]	+$470 (+$235) [+$55]	+188% (+188%) [+44%]
Basic Filing, Search, and Exam—Utility (Total)	*$1,250* *($625)* *[N/A]*	*$1,600* *($800)* *[$400]*	*+$350* *(+$175)* *[−$225]*	*+28%* *(+28%)* *[−36%]*
First Request for Continued Examination (RCE)	$930 ($465) [N/A]	$1,200 ($600) [$300]	+$270 (+$135) [−$165]	+29% +29% [−35%]
Notice of Appeal	$620 ($310) [N/A]	$1,000 ($500) [$250]	+$380 (+$190) [−$60]	+61% (+61%) [−19%]
Filing a Brief in Support of an Appeal in Application or *Ex Parte* Reexamination Proceeding	$620 ($310) [N/A]	$0 ($0) [$0]	−$620 (−$310) [−$310]	−100% (−100%) [−100%]
Appeal Forwarding Fee for Appeal in Examination or *Ex Parte* Reexamination Proceeding *or* Filing a Brief in Support of an Appeal in *Inter Partes* Reexamination (NEW)	N/A (N/A) [N/A]	$2,000 ($1,000) [$500]	+$2,000 (+$1,000) [+$500]	N/A (N/A) [N/A]
Total Appeal Fees (Paid before Examiner Answer)	*$1,240* *($620)* *[N/A]*	*$1,000* *($500)* *[$250]*	*−$240* *(−$120)* *[−$370]*	*−19%* *(−19%)* *[−60%]*
Total Appeal Fees (Paid after Examiner Answer)	*$1,240* *($620)* *[N/A]*	*$3,000* *($1,500)* *[$750]*	*+$1760* *(+$880)* *[+$130]*	*+142%* *(+142%)* *[+21%]*
Ex Parte Reexamination	*$17,750 (N/A) [N/A]	$15,000 ($7,500) [$3,750]	−$2,750 (−$10,250) [−$14,000]	−15% (−58%) [−79%]
Processing and Treating a Request for Supplemental Examination—Up to 20 Sheets (NEW)	*$5,140 (N/A) [N/A]	$4,400 ($2,200) [$1,100]	−$740 (−$2,940) [−$4,040]	−14% (−57%) [−79%]
Ex Parte Reexamination Ordered as a Result of a Supplemental Examination Proceeding (NEW)	*$16,120 (N/A) [N/A]	$13,600 ($6,800) [$3,400]	−$2,520 (−$9,320) [−$12,720]	−16% (−58%) [−79%]
Total Supplemental Examination Fees	*$21,300*	*$18,000*	*−$3,330*	*−15%*

TABLE 4—PATENT FEES PROPOSED TO CHANGE—Continued

[By greater than plus or minus 5 percent and 10 dollars]

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
	(N/A) *[N/A]*	*($9,000)* *[$4,500]*	*(−$12,300)* *[−$16,800]*	*(−58%)* *[−79%]*
Inter Partes Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $200)	NEW	$9,000 (N/A) [N/A]	+$9,000 (N/A) [N/A]	N/A (N/A) [N/A]
Inter Partes Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $400)	NEW	$14,000 (N/A) [N/A]	$14,000 (N/A) [N/A]	N/A (N/A) [N/A]
Total Inter Partes Review Fees (NEW) (For Current Fees, Per Claim Fee for Each Claim in Excess of 20 is $600)	**$27,200* *(N/A)* *[N/A]*	*$23,000* *(N/A)* *[N/A]*	*−$4,200* *(N/A)* *[N/A]*	*−15%* *(N/A)* *[N/A]*
Post Grant Review or Covered Business Method Patent Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $250)	NEW	$12,000 (N/A) [N/A]	+$12,000 (N/A) [N/A]	N/A (N/A) [N/A]
Post Grant Review or Covered Business Method Patent Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $550)	NEW	$18,000 (N/A) [N/A]	$18,000 (N/A) [N/A]	N/A (N/A) [N/A]
Total Post Grant Review or Covered Business Method Patent Fees (NEW) (For Current Fees, Per Claim Fee for Each Claim in Excess of 20 is $800)	**$35,800* *(N/A)* *[N/A]*	*$30,000* *(N/A)* *[N/A]*	*−$5,800* *(N/A)* *[N/A]*	*−16%* *(N/A)* *[N/A]*
(3) Fees To Be Set Above Cost Recovery				
Publication Fee for Early, Voluntary, or Normal Publication (Pre Grant Publication or PG Pub)	$300 (N/A) [N/A]	$0 ($0) [$0]	−$300 (−$300) [−$300]	−100% (−100%) [−100%]
Utility Issue Fee	$1,740 ($870) [N/A]	$960 ($480) [$240]	−$780 (−$390) [−$630]	−45% (−45%) [−72%]
Combined Total—Pre−grant Publication and Issue Fee—Utility	*$2,040* *($1,170)* *[N/A]*	*$960* *($480)* *[$240]*	*−$1,080* *(−$690)* *[−$930]*	*−53%* *(−59%)* *[−79%]*
Maintenance Fee Due at 3.5 Years (1st Stage)	$1,130 ($565) [N/A]	$1,600 ($800) [$400]	+$470 (+$235) [−$165]	+42% (+42%) [−29%]
Maintenance Fee Due at 7.5 Years (2nd Stage)	$2,850 ($1,425) [N/A]	$3,600 ($1,800) [$900]	+$750 (+$375) [−$525]	+26% (+26%) [−37%]
Maintenance Fee Due at 11.5 Years (3rd Stage)	$4,730 ($2,365) [N/A]	$7,400 ($3,700) [$1,850]	+$2,670 (+$1,335) [−$515]	+56% (+56%) [−22%]
(4) Fees That Will Not Be Set Using Cost Data as an Indicator				
Extensions for Response within 1st Month	$150 ($75) [N/A]	$200 ($100) [$50]	+$50 (+$25) [−$25]	+33% (+33%) [−33%]
Extensions for Response within 2nd Month	$560 ($280)	$600 ($300)	+$40 (+$20)	+7% (+7%)

TABLE 4—PATENT FEES PROPOSED TO CHANGE—Continued

[By greater than plus or minus 5 percent and 10 dollars]

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
	[N/A]	[$150]	[−$130]	[−46%]
Extensions for Response within 3rd Month	$1,270 ($635) [N/A]	$1,400 ($700) [$350]	+$130 (+$65) [−$285]	+10% (+10%) [−45%]
Extensions for Response within 4th Month	$1,980 ($990) [N/A]	$2,200 ($1,100) [$550]	+$220 (+$110) [−$440]	+11% (+11%) [−44%]
Extensions for Response within 5th Month	$2,690 ($1,345) [N/A]	$3,000 ($1,500) [$750]	+$310 (+$155) [−$595]	+12% (+12%) [−44%]
Utility Application Size Fee—For each Additional 50 Sheets that Exceed 100 Sheets	$310 ($155) [N/A]	$400 ($200) [$100]	+$90 (+$45) [−$55]	+29% (+29%) [−35%]
Independent Claims in Excess of 3	$250 ($125) [N/A]	$420 ($210) [$105]	+$170 (+$85) [−$20]	+68% (+68%) [−16%]
Claims in Excess of 20	$60 ($30) [N/A]	$80 ($40) [$20]	+$20 (+$10) [−$10]	+33% (+33%) [−33%]
Multiple Dependent Claim	$450 ($225) [N/A]	$780 ($390) [$195]	+$330 (+$165) ≤[−$30]	+73% (+73%) [−13%]
Correct Inventorship After First Action on the Merits (NEW)	N/A (N/A) [N/A]	$1,000 ($500) [$250]	+$1,000 (+$500) [+$250]	N/A (N/A) [N/A]
Derivation Petition Fee (NEW)	*$400 (N/A) [N/A]	$400 (N/A) [N/A]	$0 (N/A) [N/A]	0% (N/A) [N/A]
Derivation Institution and Trial Fee (NEW)	N/A (N/A) [N/A]	$0 ($0) [$0]	$0 ($0) [$0]	N/A (N/A) [N/A]
Assignments Submitted Electronically (NEW)	$40 (N/A) [N/A]	$0 (N/A) [N/A]	−$40 (N/A) [N/A]	−100% (N/A) [N/A]
Assignments Not Submitted Electronically (NEW)	$40 (N/A) [N/A]	$40 (N/A) [N/A]	$0 (N/A) [N/A]	0% (N/A) [N/A]

(1) Fees To Be Set at Cost Recovery

The following two fees are set at cost recovery. These fees support the policy factor of ''*offering patent prosecution options to applicants*'' by providing applicants with flexibilities in seeking patent protection. A discussion of the rationale for the proposed changes follows.

Request for Prioritized Examination:

TABLE 5—REQUEST FOR PRIORITIZED EXAMINATION FEE CHANGES

Fee information	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Request for Prioritized Examination	$4,800 ($2,400) [N/A]	$4,000 ($2,000) [$1,000]	−$800 (−$400) [−$1,400]	−17% (−17%) [−58%]

TABLE 6—REQUEST FOR PRIORITIZED EXAMINATION COST INFORMATION

Cost information	FY 2011
Cost Calculation is available in the proposed rule published in the **Federal Register** Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures, 76 FR 6369 (Feb. 4, 2011)	$4,000

A patent applicant may seek prioritized examination at the time of filing an original utility or plant application or a continuation application thereof or upon filing an RCE in compliance with section 1.114. A single request for prioritized examination may be granted for an RCE in a plant or utility application. When in the prioritized examination track, an application will be accorded special status during prosecution until a final disposition is reached. The target for prioritized examination is to provide a final disposition within twelve months, on average, of prioritized status being granted. This prioritized examination procedure is part of an effort by the USPTO to provide *patent applicants patent prosecution options* with greater control over the timing of examination of their applications. The procedure enables applicants to have greater certainty in their patent rights sooner.

The AIA established the current large and small entity fees for prioritized examination, which the Office put in place in 2011. *See* Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures Under the Leahy-Smith America Invents Act, 76 FR 59050 (Sept. 23, 2011). The large entity fee is above the Office's cost to process a single prioritized examination request to subsidize the fee revenue lost from providing small entity applicants a 50 percent discount from the large entity fee. The cost calculation for the prioritized examination fees is available in the proposed rule. *See* Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures, 76 FR 6369 (Feb. 4, 2011). The higher large entity fee, coupled with the lower small entity fee, recovers the Office's total cost for conducting all prioritized examinations.

Under section 10, micro entities are eligible to receive a 75 percent discount from the large entity fee for prioritized examination. Here, the Office proposes to set the large entity fee at cost ($4,000), instead of further increasing the fee to subsidize the new micro entity discount. This amount is the same as that which was proposed in the initial fee schedule delivered to the PPAC on February 7, 2012. The Office proposes to recover this subsidy through other fees that will be set above cost recovery, rather than through a separate, higher, large entity fee for prioritized examinations. The Office believes this system will *foster innovation* and allow for ease of entry into the patent system. Setting the large entity prioritized examination fee further above cost would contradict this policy factor and hinder fast patent protection for large entity applicants.

Request for Continued Examination (RCE)—Second and Subsequent Request (New):

TABLE 7—SECOND AND SUBSEQUENT REQUEST FOR CONTINUED EXAMINATION (RCE) FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Second and Subsequent Requests for Continued Examination (RCE) (NEW)	$930 ($465) [N/A]	$1,700 ($850) [$425]	+$770 (+$385) [−$40]	+83% (+83%) [−9%]

TABLE 8—REQUEST FOR CONTINUED EXAMINATION (RCE) HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Request for Continued Examination (RCE)	$2,070	$1,696	$1,881
Percentage of RCE cost compared to the cost to process a new application	60%	43%	51%

TABLE 8—REQUEST FOR CONTINUED EXAMINATION (RCE) HISTORICAL COST INFORMATION—Continued

Historical unit cost information	FY 2011	FY 2010	FY 2009
The historical unit cost information is calculated by subtracting the cost to complete a single application with no RCEs from the cost to complete a single application with one RCE. A description of the cost components is available for review in the ''*Section 10 Fee Setting—Activity-Based Information and Costing Methodology''* document. It is reasonable to expect that the cost to the Office to complete a single RCE should be less than the cost to complete a new application because an RCE is continuing from work already performed on the original application. The Office's historical cost data demonstrates this, with the cost to process an RCE being, on average, half of the cost to prosecute a new application.			

An applicant may file an RCE in an application that is under final rejection (i.e., prosecution is closed) by filing a submission and paying a specified fee within the requisite time period. Applicants typically file an RCE when they choose to continue to prosecute an application before the examiner, rather than appeal a rejection or abandon the application. In FY 2011, about 30 percent of applications filed were for RCEs. Generally, around 70 percent of RCE applications filed in a year are for first RCEs and the remaining 30 percent are a second or subsequent RCE. Given this data, it is reasonable to expect that most outstanding issues are resolved with the first RCE. Those applications that cannot be completed with the first RCE do not facilitate an effective administration of the patent system with the prompt conclusion of patent prosecution.

On February 7, 2012, the Office delivered to the PPAC a proposed RCE fee of $1,700. In response to stakeholder feedback on both the individual fee level and the growth rate of the patent operating reserve, the Office now proposes to divide the fee for RCEs into two parts: (1) A fee for a first RCE; and (2) a second, higher fee for a second or subsequent RCE. The Office proposes this RCE fee division because, as noted above, based on historical cost information, 70 percent of RCEs are for the first RCE, which indicates that applicants need modest additional time to resolve the outstanding issues with the examiner. The proposed multipart RCE fees demonstrate how the Office seeks to *facilitate the effective administration of the patent system* and *offer patent prosecution options to applicants.*

The large entity fee for the first RCE would be set about 30 percent below cost recovery at $1,200 to advance innovation by easing the burden on an applicant needing to resolve the outstanding items with an examiner. The Office proposes to set the fee for the second and subsequent RCEs at the same amount as initially delivered to PPAC, i.e., $1,700, which is estimated to be at cost recovery. Setting the second and subsequent RCE fees higher than the fee for the first RCE helps to recover costs for activities that strain the patent system.

The USPTO calculated the large entity cost at $1,700 (rounded) by averaging historical costs after estimating the incremental cost to complete a single application with one RCE compared to the cost to complete an application with no RCE. The Office used a three-year average to estimate the cost of a single RCE in lieu of using only FY 2011 data, because the trend in historical data shows that the cost to process an RCE increased in FY 2011, and the Office believes this increase is due to an anomaly caused by the Clearing the Oldest Patent Application (COPA) initiative, as described in the *FY 2011 USPTO Performance and Accountability Report,* available at *http://www.uspto.gov/about/stratplan/ar/2011/mda_02_03.html.*

When an applicant does not agree with a final rejection notice, the applicant has the option to file a notice of appeal, for which the fee is also proposed to be set below cost recovery and less than the fee proposed for the first, and second and subsequent, RCEs (*see* appeal fee information in the following section). The USPTO proposes this fee relationship to ensure that all applicants have viable options to dispute a final rejection when they believe the examiner has erred. These *patent prosecution options* allow applicants to make critical decisions at multiple points in the patent prosecution process.

(2) Fees To Be Set Below Cost Recovery

There are seven types of fees that the Office proposes to be set below cost recovery that meet the greater than plus or minus 5 percent and 10 dollars criteria. The policy factors relevant to setting fees below cost recovery are *fostering innovation* and *offering patent prosecution options to applicants.* Applying these policy factors to set fees below cost recovery benefits the patent system by keeping the fees low and making patent filing and prosecution more available to applicants, thus *fostering innovation.* Although many fees would increase from current fee rates under this proposed rule, the Office is not proposing to increase ''pre-grant'' fees (e.g., filing, search, and examination) enough to create the same barrier to entry as otherwise would have been created if fees were to recover the full cost of the activity. The proposed fee schedule *offers patent prosecution options* to provide applicants flexible and cost-effective options for seeking and completing patent protection. This strategy provides multipart and staged fees for certain patent prosecution activities. A discussion of the rationale for each proposed fee adjustment follows.

Basic Filing, Search, and Examination—Utility:

TABLE 9—BASIC FILING, SEARCH, AND EXAMINATION—UTILITY FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Basic Filing Fee—Utility	$380 ($190) [N/A]	$280 ($140) [$70]	−$100 (−$50) [−$120]	−26% (−26%) [−63%]

TABLE 9—BASIC FILING, SEARCH, AND EXAMINATION—UTILITY FEE CHANGES—Continued

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Utility Search Fee	$620 ($310) [N/A]	$600 ($300) [$150]	−$20 (−$10) [−$160]	−3% (−3%) [−52%]
Utility Examination Fee	$250 ($125) [N/A]	$720 ($360) [$180]	+$470 (+$235) [+$55]	+188% (+188%) [+44%]
Basic Filing, Search, and Exam—Utility (Total)	*$1,250* *($625)* *[N/A]*	*$1,600* *($800)* *[$400]*	*+$350* *(+$175)* *[−$225]*	*+28%* *(+28%)* *[−36%]*

TABLE 10—BASIC FILING, SEARCH, AND EXAMINATION—UTILITY FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011 $/% of total	FY 2010 $/% of total	FY 2009 $/% of total
Basic Filing Fee—Utility	$234/6%	$243/6%	$241/7%
Utility Search Fee	$1,521/43%	$1,694/43%	$1,520/41%
Utility Examination Fee	$1,814/51%	$1,969/51%	$1,904/52%
Total Unit Cost	*$3,569/100%*	*$3,906/100%*	*$3,665/100%*

A non-provisional application for a patent includes filing, search, and examination fees. Currently, the large entity basic filing, search, and examination fees for a utility patent recover slightly more than one-third of the average unit cost for prosecuting a patent application, while a small entity application recovers around 17 percent of the average unit cost. The Office proposes to maintain this ''back-end'' subsidy of ''front-end'' fees structure to achieve the policy goal of *fostering innovation.*

The current fee rates and respective costs associated with each stage of patent prosecution are out of alignment. For example, on average, 94 percent of the costs associated with filing, searching, and examining an application occur in the search and examination stages. Approximately half of those costs are estimated to occur in the examination stage, but only 20 percent of the total filing, search, and examination fees are derived from the examination fee (*see* Table 11). To adjust this fee structure and help stabilize the USPTO funding model, the Office proposes to increase the total filing, search, and examination fees and to realign the fee rates to more closely track the cost pattern by stage of prosecution (i.e., filing, search, and examination), while keeping each stage below actual cost.

TABLE 11—UTILITY BASIC FILING, SEARCH, AND EXAMINATION—CURRENT AND PROPOSED FEE INFORMATION

Proposed fee information	Current $/% of total	Proposed to PPAC $/% of total	Proposed $/% of total
Basic Filing Fee—Utility	$380/30%	$400/22%	$280/17%
Utility Search Fee	$620/50%	$660/36%	$600/38%
Utility Examination Fee	$250/20%	$780/42%	$720/45%
Total Fees	*$1,250/100%*	*$1,840/100%*	*$1,600/100%*

On February 7, 2012, the Office delivered to the PPAC a proposed combined total fee for filing, search, and examination of $1,840. In response to stakeholder feedback on both the individual fee level and the growth rate of the patent operating reserve, the Office now proposes to reduce the combined fees from the initial proposal ($1,840) to $1,600. This adjustment keeps the cost of entering the patent system at or below cost for large, small, and new micro entity applicants—45 percent, 22 percent, and 11 percent of FY 2011 total cost, respectively. Likewise, the proposed adjustment for filing, search, and examination fees continues to ensure that these initial fees remain a small part (10 percent) of the cost to apply for patent protection when compared to the average legal fees. The filing, search, and examination fees are also only 10 percent of the total fees paid for a patent through maintenance to full term (i.e., filing, search, examination, issue, and maintenance).

The overall increase in filing, search, and examination fees *facilitates the effective administration of the patent system,* because it encourages applicants to submit only the most thoughtful and unambiguous applications, therefore facilitating examiners' ability to provide prompt, quality interim and final decisions. At the same time, it helps to

stabilize the Office's revenue stream by collecting additional revenue when an application is filed, instead of when it is later published or issued. Also, while the Office proposes to increase these application fees, reducing the pre-grant publication and issue fees will offset that increase. In addition, as the patent IT systems continue to improve, the Office is also contemplating providing additional fee discounts to encourage applicants to use the new IT systems, when available, and the Office welcomes public comment on the possibility of these discounts.

The Office recognizes that some applicants may choose to reduce the number of applications filed in response to this proposed increase in fees. However, the Office anticipates that this impact will be relatively short-term; lasting for the first two and a half years of the fee increase. The Office estimates that applicants will file 1.3 percent fewer patent applications during FY 2013 than the number estimated to be filed in the absence of a fee increase (with new fee schedule implementation for half the fiscal year). The Office estimates that 2.7 percent fewer patent applications will be filed during FY 2014 and 4.0 percent fewer patent applications beginning in FY 2015, in response to the proposed fee adjustment. However, despite the decrease in patent applications filed when compared to the number filed absent this proposed fee increase, the Office estimates that the overall number of patent applications filed will continue to grow each year, albeit at a lower growth rate in FY 2013 through FY 2015. The Office estimates that beginning in FY 2016 the growth in patent applications filed will return to the same levels anticipated in the absence of a fee increase. Additional information about this estimate, including the calculation methodology, is available at *http://www.uspto.gov/aia_implementation/fees.jsp*, in a document entitled ''*USPTO Section 10 Fee Setting—Description of Elasticity Estimates.*'' The economic impact of this proposed adjustment is further considered in the cost-benefit calculation of the *Regulatory Impact Analysis,* available at *http://www.uspto.gov/aia_implementation/fees.jsp.*

It should be noted that utility patent fees are referenced in this section to simplify the discussion of the fee rationale. However, the rationale also applies to the filing, search, and examination fee changes for design, plant, reissue, and PCT national stage fees as outlined in the ''*USPTO Section 10 Fee Setting—Table of Patent Fee Changes.*''

Request for Continued Examination (RCE)—First Request:

TABLE 12—FIRST REQUEST FOR CONTINUED EXAMINATION (RCE) FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
First Request for Continued Examination (RCE)	$930 ($465) [N/A]	$1,200 ($600) [$300]	+$270 (+$135) [−$165]	+29% (+29%) [−35%]

TABLE 13—REQUEST FOR CONTINUED EXAMINATION (RCE) HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Request for Continued Examination (RCE)	$2,070	$1,696	$1,881
Percentage of RCE cost compared to the cost to process a new application	60%	43%	51%

The historical unit cost information is calculated by subtracting the cost to complete a single application with no RCEs from the cost to complete a single application with one RCE. A description of the cost components is available for review in the ''*Section 10 Fee Setting—Activity-Based Information and Costing Methodology*'' document. It is reasonable to expect that the cost to the Office to complete a single RCE should be less than the cost to complete a new application because an RCE is continuing from work already performed on the original application. The Office's historical cost data demonstrates this, with the cost to process an RCE being, on average, half of the cost to prosecute a new application.

An applicant may file an RCE in an application that is under final rejection (i.e., prosecution is closed) by filing a submission and paying a specified fee within the requisite time period. Applicants typically file an RCE when they choose to continue to prosecute an application before the examiner, rather than appeal a rejection or abandon the application. In FY 2011, about 30 percent of applications filed were for RCEs. Generally, around 70 percent of RCE applications filed in a year are for first RCEs and the remaining 30 percent are a second or subsequent RCE. Given this data, it is reasonable to expect that most outstanding issues are resolved with the first RCE.

On February 7, the Office delivered to the PPAC a proposed RCE fee of $1,700. In response to stakeholder feedback on both the individual fee level and the growth rate of the patent operating reserve, the Office now proposes to divide the fees for RCE into two parts: (1) a fee for a first RCE; and (2) a second, higher fee for a second or subsequent RCE. The Office is proposing this RCE fee division because, as stated before, 70 percent of RCEs are for the first RCE, which indicates that applicants need modest additional time to resolve the outstanding issues with the examiner. Multipart RCE fees demonstrate how the Office seeks to *facilitate the effective administration of the patent system* and *offer patent prosecution options to applicants.*

The large entity fee for the first RCE would be set about 30 percent below cost recovery at $1,200 to advance innovation by easing the burden on an applicant needing to resolve the outstanding items with an examiner. This amount is a reduction from the $1,700 fee included in the February 7, 2012, initial proposal to PPAC.

The USPTO has calculated the large entity cost at $1,700 (rounded) by averaging historical costs after

estimating the incremental cost to complete a single application with one RCE compared to the cost to complete an application with no RCE. The Office used a three-year average to estimate the cost of a single RCE in lieu of using only FY 2011 data, because the trend in historical data shows that the cost to process an RCE increased in FY 2011, and the Office believes this increase is due to an anomaly caused by the Clearing the Oldest Patent Application (COPA) initiative, as described in the *FY 2011 USPTO Performance and Accountability Report,* available at *http://www.uspto.gov/about/stratplan/ar/2011/mda_02_03.html.*

When an applicant does not agree with a final rejection notice, the applicant has the option to file a notice of appeal as an alternative to filing an RCE. The fee to file a notice of appeal is also proposed to be set below cost recovery and less than the fee proposed for the first, and second and subsequent, RCEs (*see* appeal fee information in the following section). The USPTO proposes this fee relationship to ensure all applicants have viable options to dispute a final rejection when they believe the examiner has erred. These *patent prosecution options* allow applicants to make critical decisions at multiple points in the patent prosecution process.

In addition to dividing the RCEs fees, the Office is exploring other ways to address RCEs. Specifically, the Office recently announced two pilot programs that aim to avoid the need to file an RCE by permitting: (i) An Information Disclosure Statement to be submitted after payment of the issue fee; and (ii) further consideration of after final responses.

The first initiative, called Quick Path Information Disclosure Statement (IDS) Pilot, permits an applicant to file an IDS after a final rejection and gives the examiner time to consider whether prosecution should be reopened. If the items of information in the IDS do not require prosecution to be reopened, the application will return to issue, thereby eliminating need for an RCE.

The second initiative, called the After Final Consideration Pilot, authorizes a limited amount of non-production time for examiners to consider responses filed after a final rejection with the goal of achieving compact prosecution and increased collaboration between examiners and stakeholders. Accordingly, the Office is hopeful for the success of these two pilot programs to reduce the number of RCEs and thereby enable applicants to secure a patent through a single application filing.

Appeal Fees (Partially New):

TABLE 14—APPEAL FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Notice of Appeal	$620 ($310) [N/A]	$1,000 ($500) [$250]	+$380 (+$190) [−$60]	+61% (+61%) [−19%]
Filing a Brief in Support of an Appeal in Application or *Ex Parte* Reexamination Proceeding	$620 ($310) [N/A]	$0 ($0) [$0]	−$620 (−$310) [−$310]	−100% (−100%) [−100%]
Appeal Forwarding Fee for Appeal in Examination or *Ex Parte* Reexamination Proceeding *or* Filing a Brief in Support of an Appeal in *Inter Partes* Reexamination (NEW)	N/A (N/A) [N/A]	$2,000 ($1,000) [$500]	+$2,000 (+$1,000) [+$500]	N/A (N/A) [N/A]
Total Appeal Fees (paid before Examiner Answer)	*$1,240 ($620) [N/A]*	*$1,000 ($500) [$250]*	*−$240 (−$120) [−$370]*	*−19% (−19%) [−60%]*
Total Appeal Fees (paid after Examiner Answer)	*$1,240 ($620) [N/A]*	*$3,000 ($1,500) [$750]*	*+$1,760 (+$880) [+$130]*	*+142% (+142%) [+21%]*

TABLE 15—APPEAL FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Notice of Appeal to Patent Trial and Appeal Board Filing a Brief in Support of an Appeal Appeal Forwarding Fee	$4,799	$4,960	$5,008

An applicant who disagrees with an examiner's final rejection may appeal to the BPAI by filing a notice of appeal and the required fee within the time period provided. An applicant likewise may file a notice of appeal after the applicant's claim(s) has/have been twice rejected, regardless of whether the claim(s) has/have been finally rejected. Further, an applicant may file a notice of appeal after a first rejection in a continuing application if any of the

claims in the parent application were previously rejected.

Within two months from the date of filing the notice of appeal, the appellant must file a Brief. Then, the examiner must file an Examiner's Answer. After the Answer is mailed, the appeal file is forwarded to the BPAI for review.

Currently, a large entity applicant pays $620 to file a notice of appeal and another $620 when filing a brief—a total of $1,240. These current fees only recover 25 percent of the Office's cost of an appeal. The Office proposes to increase appeal fees to reduce the gap between fees and cost. At the same time, the Office proposes to *offer patent prosecution options to applicants* and stage the appeal fees to recover additional cost at later points in time and thereby minimize the cost impacts on applicants associated with withdrawn final rejections.

The Office proposes a $1,000 notice of appeal fee and a $0 fee when filing the brief. Both of these actions would occur prior to the preparation of an Examiner's Answer (and forwarding of the appeal to the BPAI). The Office recognizes that after some notices of appeal are filed, the matter is resolved, and there is no need to take the ultimate step of forwarding the appeal to the BPAI for a decision. The Office further proposes a $2,000 fee to forward the appeal file—containing the appellant's Brief and the Examiner's Answer—to the BPAI for review. Under this proposed fee structure, one-third of the fee would be paid at the time of notice of appeal, and the remaining two-thirds would be paid after the Examiner's Answer, but only if the appeal is then forwarded to the BPAI. This fee payment structure allows the appellant to reduce the amount invested in the appeal process until receiving the Examiner's Answer. In fact, when prosecution issues are resolved after the notice of appeal and before forwarding an appeal to the BPAI, a large entity appellant would pay only $1,000 to obtain an Examiner's Answer—19 percent less than under the current fee structure.

Staging the appeal fees in this manner allows applicants to pay less in situations when an application is either allowed or reopened instead of being forwarded to the BPAI. This *patent prosecution option* allows applicants to make critical decisions at multiple points in the patent prosecution process.

When considering the proposed appeal fees, the Office evaluated several options to minimize the cost to applicants. For example, it contemplated refunding certain appeal fees if the appeal was not forwarded to the BPAI. However, under the current refund statutory authority, the Office can only refund all or part of a fee paid by mistake or in excess of the fee due. *See* 35 U.S.C. 42(d). Neither of these conditions would apply when the issues raised on appeal are resolved and the appeal is not forwarded to the BPAI because the matter is resolved.

On February 7, 2012, the Office delivered to PPAC a fee proposal that included two appeal fee payment features: (1) Staging the appeal-related fees so that cost impacts on some applicants are minimized; and (2) paying a $0 pre-grant publication (PGPub) and issue fee if the examiner withdraws a final rejection prior to an appeal being forwarded to the BPAI.

While the staging features delivered to PPAC are included in this proposed rule, after reevaluating the $0 PGPub and Issue fee, the Office decided against proposing it here. Sometimes mistakes or errors in prosecution are not self-evident, and sometimes examiners properly consider After Final amendments and allow the application even after the applicant has filed an appeal. Accordingly, when operating with a $0 PGPub and Issue fee, the Office had planned to implement a case-by-case review process to evaluate the root cause of why the applicant filed an appeal. This process would increase the Office's cost of operations without realizing counterbalancing benefits.

Additionally, a $0 PGPub and issue fee would eliminate the need for the notice of issue fee payment and could impact when applicants receive notice that their applications will proceed to issue. The Office understands that the timing of issuance is extremely important in managing a business, and that timing may be critically important when an applicant intends to file a continuing application. In view of these considerations and risks, the Office decided not to propose a $0 PGPub and issue fee here.

Finally, just as the Office is exploring ways to minimize unnecessary RCE filings, the Office is likewise exploring other options, including pilot programs, in an effort to reduce the need to appeal to the BPAI.

Ex Parte Reexamination:

TABLE 16—EX PARTE REEXAMINATION FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Ex Parte Reexamination	*$17,750 (N/A) [N/A]	$15,000 ($7,500) [$3,750]	−$2,750 (−$10,250) [−$14,000]	−15% (−58%) [−79%]

* For purposes of comparing amounts, where a new fee has been proposed under 35 U.S.C. 41(d)(2) in the January and February 2012 Proposed Rules, that proposed fee (as adjusted by the final rule) is included in the current fee column and denoted with (*).

TABLE 17—EX PARTE REEXAMINATION HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Ex Parte Reexamination	$19,626	$16,647	$17,162

TABLE 18—EX PARTE REEXAMINATION PROSPECTIVE COST INFORMATION

Prospective cost information	FY 2013
Cost Calculation, 77 FR 3666 (Jan. 25, 2012) available at *http://www.uspto.gov/aia_implementation/cost_calc_supplemental_exam.pdf*	$17,750

Any person (including anonymously) may file a petition for the *ex parte* reexamination of a patent that has been issued. The Office initially determines if the petition presents ''a substantial new question of patentability'' as to the challenged claims. If such a new question has been presented, the Office will order a reexamination of the patent for the relevant claims.

Currently, the *ex parte* reexamination fee is $2,520. 37 CFR 1.20. However, while examining its costs to estimate the cost of a supplemental examination (pursuant to section 41(d)), the Office found that its current *ex parte* reexamination fee does not recover the Office's costs for that service. In fact, the Office incurs about seven times the amount of the current fee for an *ex parte* reexamination. Accordingly, to remedy this discrepancy, in January 2012, the Office proposed to set the *ex parte* reexamination fee under section 41(d) at $17,750, which recovers the Office's costs for the *ex parte* reexamination (Changes To Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and To Revise Reexamination Fees, 77 FR 3666 (Jan. 25, 2012)).

On February 7, 2012, the Office delivered to the PPAC a fee proposal under section 10 of the AIA proposing setting the large entity fee at the same amount as proposed in the January and February 2012 Proposed Rules (i.e., $17,750) and introducing new small and micro entity discounts for an *ex parte* reexamination. However, in accordance with section 10, third party requestors are not eligible for the micro entity discounts.

In response to stakeholder feedback on both the individual fee level and the growth rate of the patent operating reserve in the initial proposal, the Office now proposes to reduce the large entity fee for *ex parte* reexamination to $15,000, which is 15 percent below the Office's cost of conducting the proceeding. Setting the fee below cost will reduce the growth rate of the operating reserve and permit easier access to the *ex parte* reexamination process, which benefits the patent system and patent quality by removing low quality patents.

Supplemental Examination:

TABLE 19—SUPPLEMENTAL EXAMINATION FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Processing and Treating a Request for Supplemental Examination—Up to 20 Sheets (NEW)	*$5,140 (N/A) [N/A]	$4,400 ($2,200) [$1,100]	−$740 (−$2,940) [−$4,040]	−14% (−57%) [−79%]
Ex Parte Reexamination Ordered as a Result of a Supplemental Examination Proceeding (NEW)	*$16,120 (N/A) [N/A]	$13,600 ($6,800) [$3,400]	−$2,520 (−$9,320) [−$12,720]	−16% (−58%) [−79%]
Total Supplemental Examination Fees	*$21,300 (N/A) [N/A]	$18,000 ($9,000) [$4,500]	−$3,330 (−$12,300) [−$16,800]	−15% (−58%) [−79%]

* For purposes of comparing amounts, where a new fee has been proposed under 35 U.S.C. 41(d)(2) in the January and February 2012 Proposed Rules, that proposed fee (as adjusted by the final rule) is included in the current fee column and denoted with (*).

TABLE 20—SUPPLEMENTAL EXAMINATION PROSPECTIVE COST INFORMATION

Prospective cost information	FY 2013
Cost calculation 77 FR 3666 (Jan. 25, 2012) available at *http://www.uspto.gov/aia_implementation/cost_calc_supplemental_exam.pdf*	
Supplemental Examination Request	$5,180
Supplemental Examination Reexamination	$16,120
Total Supplemental Examination Costs	$21,300

A patent owner may request a supplemental examination of a patent by the Office to consider, reconsider, or correct information believed to be relevant to the patent. This proceeding will help the patent owner preempt challenges to the patent during litigation. The need for this proceeding arises only after a patent owner recognizes that there is information that should have been brought to the attention of the Office to consider or reconsider during the application process, or information submitted

during the application process that needs to be corrected.

The January and February 2012 Proposed Rules (as adjusted by the final rule), using section 41(d), proposed to set the fees for the request for supplemental examination and the *ex parte* reexamination ordered as a result of a supplemental examination proceeding at $5,140 and $16,120, respectively.

On February 7, 2012, the Office delivered to the PPAC proposed fees of $7,000 and $20,000, respectively, using section 10 of the AIA, for the request for supplemental examination and the *ex parte* reexamination ordered as a result of a supplemental examination proceeding. This increase was proposed to encourage applicants to submit applications with all relevant information during initial examination, which facilitates compact patent prosecution. In response to stakeholder feedback on both the individual fee level and the growth rate of the patent operating reserve in the initial proposal, the Office now proposes to reduce these fees to $4,400 and $13,600, respectively. The Office believes these reduced fee amounts continue to be sufficient to encourage applicants to submit applications with all relevant information during initial examination, yet low enough to facilitate the effective administration of the patent system by providing patentees with an alternative to the court system for addressing inequitable conduct. The Office proposes to set total supplemental examination fees of $18,000, 15 percent below cost and 30 percent less than the total of $27,000 included in the proposal delivered to PPAC on February 7, 2012.

Inter Partes Review:

TABLE 21—INTER PARTES REVIEW FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Inter Partes Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $200)	NEW	$9,000 (N/A) [N/A]	+$9,000 (N/A) [N/A]	N/A (N/A) [N/A]
Inter Partes Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $400)	NEW	$14,000 (N/A) [N/A]	+$14,000 (N/A) [N/A]	N/A (N/A) [N/A]
Total Inter Partes Review Fees (For Current Fees, per Claim Fee for Each Claim in Excess of 20 is $600)	**$27,200 (N/A) [N/A]*	*$23,000 (N/A) [N/A]*	*− $4,200 (N/A) [N/A]*	*− 15% (N/A) [N/A]*

* For purposes of comparing amounts, where a new fee has been proposed under 35 U.S.C. 41(d)(2) in the January and February 2012 Proposed Rules, that proposed fee (as adjusted by the final rule) is included in the current fee column and denoted with (*).

TABLE 22—INTER PARTES REVIEW PROSPECTIVE COST INFORMATION

Prospective Cost Information	FY 2013

The Total *Inter Partes* Review cost calculation of $27,200, 77 FR 6879, (Feb. 9, 2012) is available for review at *http://www.uspto.gov/aia_implementation/rin-0651-ac70.pdf.* The Office estimated that 35 hours of Judge time would be required during review and used this as the basis for estimating the cost for the *Inter Partes* Review. The IT-related costs are included in the Review Request portion of the fee.

Description	Base cost	Per claim cost
Inter Partes Review Request—up to 20 claims	$10,500	>20 = $200
Inter Partes Review Post Institution Fee—up to 15 claims	$16,700	>15 = $400
Total Inter Partes Review Costs	$27,200	N/A

Inter partes review is a new trial proceeding created by the AIA that allows the Office to review the patentability of one or more claims in a patent only on a ground that could be raised under 35 U.S.C. 102 or 103, and only on the basis of prior art consisting of patents or printed publications. The *inter partes* review process begins with a third party filing a petition. An *inter partes* review may be instituted upon a showing that there is a reasonable likelihood that the petitioner would prevail with respect to at least one claim challenged.

In February 2012, the Office proposed setting a single fee for *inter partes* review pursuant to 35 U.S.C. 41(d), at a level to recover the Office's entire cost of conducting such proceeding. (*See* 77 FR 6879 (Feb. 9, 2012)); (*See also* 77 FR 7041 (Feb. 10, 2012)). Under that proposal, the fee for an *inter partes* review would be based on the number of claims for which review is sought, with the entire fee due on filing of the petition. A petitioner could file a petition seeking review of up to 20 claims for the base fee of $27,200. Fees would increase for each additional 10 claims. For example, an *inter partes* review of 51 to 60 claims would have cost $68,000 (*See* 77 FR 7050 (Feb. 10, 2012)).

On February 7, 2012, the Office delivered to the PPAC a fee proposal under section 10 setting the fees at the same amount as proposed in the February 2012 Proposed Rule. In

response to stakeholder feedback on the individual fee levels, the structure of the proposed *inter partes* review fees, and the overall growth rate of the patent operating reserve in the initial proposal, with this rulemaking, the Office now proposes to set the *inter partes* review fees at a level below the Office's cost recovery and to improve the fee payment structure.

The Office now proposes to set four separate fees for *inter partes* review, which the petitioner would pay upon filing a petition. The Office also proposes to return fees for post-institution services should a petition not be instituted. Similarly, the Office proposes that fees paid for post-institution review of a large number of claims be returned if the Office only institutes the review of a subset of the requested claims.

The USPTO proposes to set the fee for an *inter partes* review petition at $9,000 for up to 20 claims. This fee would not be returned or refunded to the petitioner even if the review is not instituted.

In addition, the USPTO proposes to set a per claim fee of $200 for each claim requested for review in excess of 20. This fee would not be returned or refunded to the petitioner if the review is not instituted or if the institution is limited to a subset of the requested claims.

The USPTO also proposes to set the *inter partes* review post-institution fee at $14,000, for a review of up to 15 claims. This fee would be returned to the petitioner if the Office does not institute a trial.

Likewise, the Office proposes to set a per claim fee of $400 for review of each claim in excess of 15 during the post-institution trial. The entire post-institution fee would be returned to the petitioner if the Office does not institute a review. The excess claims fees would be returned if review of l5 or fewer claims is instituted. If the Office reviews more than 15 claims, but fewer than all of the requested claims, it would return part of the fee for each claim the Office did not review.

For example, under this proposal, if a party requests *inter partes* review of 52 claims, the petitioner would pay $44,200 ($9,000 plus 32 [52 minus 20] times $200 equals $15,400; plus $14,000 plus 37 [52 minus 15] times $400 equals $28,800; for a total of $44,200). This amount is 35 percent less than what the petitioner would pay under either the February 2012 Proposed Rule or the initial proposal to PPAC in February 2012. In addition, under this proposed rule, if the petitioner seeks review of 52 claims, but the Office only institutes review of 40 claims, the Office would return $4,800 (it did not institute review of the 41st through 52nd claim for which review was requested). Alternatively, if the review is not instituted at all, the Office would return the entire $28,800 for claims over 15 as well as the base $14,000 post-institution fee.

The Office proposes to maintain these two claim thresholds—one for petitions (up to 20 claims) and the other for the post-institution trials (up to 15 claims)—because it anticipates that it will not institute review of 25 percent of claims for which review is requested. The Office bases this approach on its analysis of the initial *inter partes* reexaminations filed after September 15, 2011, as well as the new opportunity for patent owners to file a response to the petition before the Office determines whether and for which claims to institute review.

This proposal also considers certain policy factors, such as *fostering innovation* through facilitating greater access to the *inter partes* review proceedings because certainty of patent rights benefits the overall IP system.

Post Grant Review or Covered Business Method Patent Review:

TABLE 23—POST GRANT REVIEW OR COVERED BUSINESS METHOD PATENT REVIEW FEE CHANGES

Fee description	Current fees	Proposed fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Post Grant Review or Covered Business Method Patent Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $250)	NEW	$12,000 (N/A) [N/A]	+$12,000 (N/A) [N/A]	N/A (N/A) [N/A]
Post Grant Review or Covered Business Method Patent Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $550)	NEW	$18,000 (N/A) [N/A]	$18,000 (N/A) [N/A]	N/A (N/A) [N/A]
Total Post Grant Review or Covered Business Method Patent Review Fees (For Current Fees, Per Claim Fee for Each Claim in Excess of 20 is $800)	**$35,800 (N/A) [N/A]*	*$30,000 (N/A) [N/A]*	*−$5,800 (N/A) [N/A]*	*−16% (N/A) [N/A]*

* For purposes of comparing amounts, where a new fee has been proposed under 35 U.S.C. 41(d)(2) in the January and February 2012 Proposed Rules, that proposed fee (as adjusted by the final rule) is included in the current fee column and denoted with (*).

TABLE 24—POST GRANT REVIEW OR COVERED BUSINESS METHOD PATENT REVIEW PROSPECTIVE COST INFORMATION

Prospective cost information	FY 2013
The Total Post Grant Review cost calculation of $35,800, 77 FR 6879, (Feb. 9, 2012) is available for review at *http://www.uspto.gov/aia_implementation/rin-0651-ac70.pdf*. The Office estimated that 50 hours of Judge time would be required during review and used this as the basis for estimating the cost for the Post Grant Review. The IT-related costs are included in the Review Request portion of the fee.	

Description	Base cost	Per claim cost
Post Grant Review or Covered Business Method Patent Review Request—up to 20 claims	$14,700	> 20 = $250
Post Grant Review or Covered Business Method Patent Review Post Institution Fee—up to 15 claims	$21,100	> 15 = $550
Total Post Grant Review Costs	$35,800	N/A

Post grant review is a new trial proceeding created by the AIA that allows the Office to review the patentability of one or more claims in a patent on any ground that could be raised under 35 U.S.C. 282(b)(2) and (b)(3) in effect on September 16, 2012. The post grant review process begins when a third party files a petition within nine months of the grant of the patent. A post grant review may be instituted upon a showing that it is more likely than not that at least one challenged claim is unpatentable or that the petition raises an unsettled legal question that is important to other patents or patent applications. If the trial is instituted and not dismissed, the Board will issue a final determination within one year of institution. This period can be extended for good cause for up to six months from the date of one year after instituting the review.

In February 2012, the Office proposed under 35 U.S.C. 41(d) to set a single fee for post grant review at a level to recover the entire cost of conducting the proceeding based on the number of claims under review, with the entire fee due on filing of the petition. (*See* Changes To Implement Post-Grant Review Proceedings, 77 FR 7060 (Feb. 9, 2012)). The Office proposed a base fee of $35,800 for a post grant review of up to 20 claims. In addition, the Office proposed a structure of escalating fees for each additional 10 claims. For example, a post grant review of 51 to 60 claims would cost $89,500 (*See* 77 FR 7060, 7070).

On February 7, 2012, the Office submitted to the PPAC a fee proposed under section 10 setting the fees at the same amount as the February 2012 proposed rule. In response to stakeholder feedback on the individual fee levels, alternative post grant review fee structures, and overall growth rate of the patent operating reserve in the initial proposal, the Office now proposes to set the post grant review fee at a level below the Office's cost recovery and to improve the fee payment structure.

The Office proposes here to set four separate fees for post grant review, which the petitioner would pay upon filing a petition for post grant review. The Office also proposes to return fees for post-institution services if a review is not instituted. Similarly, the Office proposes that fees paid for a post-institution review of a large number of claims be returned if the Office only institutes the review of a subset of the requested claims. The Office proposes the same structure and fees apply for covered business method review.

The Office proposes to set the fee for a post grant review petition at $12,000 for up to 20 claims. This fee would not be returned or refunded to the petitioner even if the review is not instituted by the Office.

In addition, the Office proposes a per claim fee of $250 for each claim in excess of 20. This fee would not be returned or refunded to the petitioner if the review is not instituted, or if the institution is limited to a subset of the requested claims.

The USPTO also proposes a post grant review post-institution fee at $18,000, for post-institution review of up to 15 claims. This fee would be returned to the petitioner if the Office does not institute a review.

Likewise, the Office proposes to set a per claim fee of $550 for review of each claim in excess of 15 during the post-institution trial. The entire fee would be returned to the petitioner if the Office does not institute a review. The excess claims fees would be returned if review of 15 or fewer claims is instituted. If the Office reviews more than 15 claims, but fewer than all of the requested claims, it would return part of the fee for each claim that was not instituted.

For example, under the proposal here, a party seeking post grant review of 52 claims would pay $58,350 ($12,000 plus 32 [52 minus 20] times $250 equals $20,000; plus $18,000 plus 37 [52 minus 15] times $550 equals $38,350; for a total of $58,350). This amount is 35 percent less than the petitioner would pay under the February 2012 Proposed Rule and the initial proposal to PPAC in February 2012. In addition, under this proposal, if the petitioner requests review of 52 claims, but the Office only institutes review of 40 claims, then the Office would return $6,600 (it did not institute review of the 41st through 52nd claims for which review was requested). Alternatively, if a review is not instituted at all, the Office would return the entire $38,350 for claims over 15, as well as the base $18,000 post-institution fee.

The Office proposes to maintain two different claim thresholds—one for petition (up to 20 claims) and the other for the post-institution trials (up to 15 claims)—because it anticipates that it will not institute a review of 25 percent of claims for which review is requested. The Office bases this approach on its analysis of the initial *inter partes* reexaminations filed after September 15, 2011, as well as the new opportunity for patent owners to file a response to the petition before the Office determines whether and for which claims to institute review.

The adjustments proposed here also consider certain policy factors, such as *fostering innovation* through facilitating greater access to the post grant review proceedings because certainty of patent rights benefits the overall IP system.

Pre Grant Publication (PGPub) Fee:

TABLE 25—PRE GRANT PUBLICATION (PGPUB) FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Publication Fee for Early, Voluntary, or Normal Publication	$300 (N/A) [N/A]	$0 ($0) [$0]	−$300 (−$300) [−$300]	100% (−100%) [−100%]
Publication Fee for Republication	$300 (N/A) [N/A]	$300 *(N/A)* *[N/A]*	$0 *(N/A)* *[N/A]*	0% *(N/A)* *[N/A]*

TABLE 26—PRE GRANT PUBLICATION (PGPUB) HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Publication Fee for Early, Voluntary, or Normal Publication	$181	$158	$243

With certain exceptions, each nonprovisional utility and plant patent application is published 18 months from the earliest filing date. The fee for this pre-grant publication (PGPub) is paid only after a patent is granted. If a patent is never granted, the applicant does not pay the fee for PGPub. Once the Office determines that the invention claimed in a patent application is patentable, the Office sends a notice of allowance to the applicant, outlining the patent application publication fees due, along with the patent issue fee. The applicant must pay these publication and issue fees three months from the date of the notice of allowance to avoid abandoning the application.

Currently, the PGPub fee is set at $300 and collects over one and a half times the cost to publish a patent application. The IP system benefits from publishing patent applications; disclosing information publicly stimulates research and development, as well as subsequent commercialization through further development or refinement of an invention. Therefore, a lower PGPub fee would benefit both the applicant and innovators in the patent system.

Given that publishing a patent application 18 months after its receipt benefits the IP system more than individual applicants, the Office proposes to reduce the PGPub fee to $0. Reducing this fee also helps rebalance the fee structure and offsets the proposed increases to filing, search, and examination fees ($350 increase, less this $300 decrease is a net $50 increase—or 3 percent—to apply for a patent and publish the application). This proposed change is consistent with the initial proposal delivered to PPAC on February 7, 2012.

It should be noted that the PGPub fee for republication of a patent application (1.18(d)(2)) is not proposed to be adjusted, but will be set at the existing rate of $300. The Office proposes to keep this fee at its existing rate for each patent application that must be published again after a first publication for $0.

(3) Fees To Be Set *Above* Cost Recovery

There are two types of fees that the Office proposes to set above cost recovery that meet the greater than plus or minus 5 percent and 10 dollars criteria. The policy factor relevant to setting fees above cost recovery is *fostering innovation.* Back-end fees (e.g., issue and maintenance fees) work in concert with front-end fees. The above-cost, back-end fees allow the Office to recover the revenue required to subsidize the cost of entry into the patent and reduce the backlog of patent applications. A discussion of the rationale for each proposed change follows.

Issue Fees:

TABLE 27—ISSUE FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Utility Issue Fee	$1,740 ($870) [N/A]	$960 ($480) [$240]	−$780 (−$390) [−$630]	−45% (−45%) [−72%]

TABLE 28—ISSUE FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Utility Issue Fee	$257	$231	$224

Once the Office determines that the invention claimed in a patent application is patentable, the USPTO sends a notice of allowance to the applicant outlining the patent application publication and patent issue fees due. The applicant must pay the publication and issue fees three months from the date of the notice of allowance to avoid abandoning of the application.

In setting fees due after completing prosecution at a level higher than cost, front-end fees can be maintained below cost, thereby *fostering innovation.* Currently, the large entity issue fee is set at $1,740, which is seven times more than the cost of issuing a patent. This fee recovers revenue, but it also poses a challenge to applicants at time of allowance. When the issue fee is due, patent owners possess less information about the value of their invention than they do a few years later. Lowering issue fees would consequently help inventors financially at a time when the marketability of their invention is less certain. Finally, setting the PGPub fee at $0 as discussed above, and recovering the combined cost of publishing and issuing an application through only the issue fee benefits small and micro entity innovators. The 50 percent discount for small entities and 75 percent discount for micro entities are not available for the publication fee, but are available for the issue fee. Thus, there are benefits to both the IP system and the applicant when the issue fees are set at an amount lower than the current fee amount, but still above cost recovery.

To both maintain the beneficial aspects of this back-end subsidy model and realign the balance of the fee structure, the Office proposes to decrease the large entity issue fee to $960. This amount is about twice the cost of both publishing an application (which is proposed to be set below cost at $0) and issuing a patent. This fee adjustment is over a 50 percent decrease from the amount currently paid for both the PGPub and issue fees together and is the amount initially proposed in the fee schedule delivered to the PPAC on February 7, 2012.

It should be noted that utility issue fees are referenced in this section to simplify the discussion of the fee rationale; however, the rationale is applicable to the issue fee changes for design, plant, and reissue fees as outlined in the *''USPTO Section 10 Fee Setting—Table of Patent Fee Changes''.*

Maintenance Fees:

TABLE 29—MAINTENANCE FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Maintenance Fee Due at 3.5 Years (1st Stage)	$1,130 ($565) [N/A]	$1,600 ($800) [$400]	+$470 (+$235) [−$165]	+42% (+42%) [−29%]
Maintenance Fee Due at 7.5 Years (2nd Stage)	$2,850 ($1,425) [N/A]	$3,600 ($1,800) [$900]	+$750 (+$375) [−$525]	+26% (+26%) [−37%]
Maintenance Fee Due at 11.5 Years (3rd Stage)	$4,730 ($2,365) [N/A]	$7,400 ($3,700) [$1,850]	+$2,670 (+$1,335) [−$515]	+56% (+56%) [−22%]

TABLE 30—MAINTENANCE FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011*	FY 2010	FY 2009
Maintenance Fee Due at 3.5 Years (1st Stage)	.....	$1	$2
Maintenance Fee Due at 7.5 Years (2nd Stage)	.....	$1	$2
Maintenance Fee Due at 11.5 Years (3rd Stage)	.....	$1	$2

*Beginning in FY 2011, the Office determined that the maintenance fee activity was in support of the process application fees activity and its associated fees. Therefore, the Office reassigned these costs accordingly, and no longer estimates a unit cost for maintenance fee activities. Additional information about the methodology for determining the cost of performing the Office's activities, including the cost components related to respective fees, available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1* in the document titled ''*USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology.''*

Maintenance fees must be paid at defined intervals—3.5 years, 7.5 years, and 11.5 years—after the Office grants a utility patent in order to keep the patent in force. Maintaining a patent costs the Office very little. However, maintenance fees benefit the Office and the patent system by generating revenue that permits the Office to keep front-end patent prosecution fees below cost and to subsidize the cost of prosecution for small and micro entity innovators.

Additionally, maintenance fees will be paid only by patent owners who believe the value of their patent is much higher than this fee for renewing these patent rights, thus when not renewed the subject matter of the patent can be utilized freely. On this score, setting early maintenance fees lower than later maintenance fees mitigates uncertainty associated with the value of the patent. As the value becomes more certain over time, the maintenance fee should (and does) increase, because patent owners have more information about the commercial value of the patented invention and can more readily decide whether the benefit of a patent outweighs the cost of the fee. For example, when a patent holder pays the first stage maintenance fee at 3.5 years, the holder has less information about the commercial value of the patent than when the holder pays the third stage maintenance fee at 11.5 years.

Therefore, under a progressively higher maintenance fee schedule, a

patent holder is positioned to perform an individual cost-benefit analysis to determine if the patent is at least as valuable as the maintenance fee payment. When the patent holder determines the patent benefit (value) outweighs the cost (maintenance fee), the holder will likely continue to maintain the patent. Conversely, when the patent holder determines that the benefit is less than the cost, the holder likely will not maintain the patent to full term. When the patent expires, the subject matter of the patent is no longer held with exclusive patent rights and subsequent stakeholders may utilize the idea from the public domain and work to extend its innovation or commercialization. More information on the economic costs and benefits of patent renewal can be found in the rulemaking Regulatory Impact Analysis, which is available for review at *http://www.uspto.gov/aia_implementation/fees.jsp*.

The Office proposes to increase the first, second, and third stage maintenance fees to $1,600, $3,600, and $7,400, respectively. This increase is commensurate with the subsidies offered for prosecution of a patent application and aligns with the fee setting strategy of *fostering innovation* by setting front-end fees below cost. The increase also ensures the USPTO has sufficient aggregate revenue to recover the aggregate cost of operations and implement goals and objectives.

On February 7, 2012, the Office delivered to the PPAC proposed fees of $1,600, $3,600, and $7,600 for the first, second, and third stage maintenance fees respectively. In response to stakeholder feedback on both the individual fee levels and the growth rate of the patent operating reserve, the Office now proposes to decrease the third stage maintenance fee to $7,400 while maintaining the first and second stage maintenance fees at the rates proposed to the PPAC.

(4) Fees That Are *Not* Set Using Cost Data as an Indicator

Fees in this category include those proposed fees for which the USPTO does not typically maintain historical cost information separate from that included in the average overall cost of activities during patent prosecution or did not refer to cost information for setting the particular fee. Instead, the Office evaluates the policy factors described in *Rulemaking Goals and Strategies, Part III* above, to inform fee setting. Some of these fees are based on the size and complexity of an application and help the Office to *effectively administer the patent system* by encouraging applicants to engage in certain activities. Setting fees at particular levels can: (1) Encourage the submission of applications or other actions which lead to more efficient processing where examiners can provide, and applicants can receive, prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and the faster dissemination of patented information; and (3) help recover costs for activities that strain the patent system.

There are six types of fees in this category. A discussion of the rationale for each proposed change follows.

Extensions of Time Fees:

TABLE 31—EXTENSIONS OF TIME FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Extensions for Response within 1st Month	$150 ($75) [N/A]	$200 ($100) [$50]	+$50 [+$25] [−$25]	+33% (+33%) [−33%]
Extensions for Response within 2nd Month	$560 ($280) [N/A]	$600 ($300) [$150]	+$40 [+$20] [−$130]	+7% (+7%) [−46%]
Extensions for Response within 3rd Month	$1,270 ($635) [N/A]	$1,400 ($700) [$350]	+$130 [+$65] [−$285]	+10% (+10%) [−45%]
Extensions for Response within 4th Month	$1,980 ($990) [N/A]	$2,200 ($1,100) [$550]	+$220 [+$110] [−$440]	+11% (+11%) [−44%]
Extensions for Response within 5th Month	$2,690 ($1,345) [N/A]	$2,000 ($1,500) [$750]	+$310 [+$155] [−$595]	+12% (+12%) [−44%]

If an applicant must reply within a non-statutory or shortened statutory time period, the applicant can extend the reply time period by filing a petition for an extension of time and paying the requisite fee. Extensions of time may be automatically authorized at the time an application is filed or requested as needed during prosecution. The USPTO proposes to increase these fees to facilitate an efficient and prompt conclusion of application processing, which benefits the Office's compact prosecution initiatives and reduces patent pendency. The fees proposed in this rulemaking are the same as those included in the proposal delivered to the PPAC on February 7, 2012.

Application Size Fees:

TABLE 32—APPLICATION SIZE FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Application Size Fee—For each Additional 50 Sheets that Exceed 100 Sheets	*$310* ($155) [N/A]	*$400* ($200) [$100]	*+$90* (+$45) [−$55]	*+29%* (+29%) [−35%]

Currently, the Office charges an additional fee for any application where the specification and drawings together exceed 100 sheets of paper. The application size fee applies for each additional 50 sheets of paper or fraction thereof. The USPTO proposes to increase the application size fee to facilitate an efficient and compact application examination process, which benefits the applicant and the *effective administration of patent prosecution.* Succinct applications facilitate faster examination with an expectation of fewer errors. The fees proposed in this rulemaking are the same as those included in the proposal delivered to the PPAC on February 7, 2012.

Excess Claims:

TABLE 33—EXCESS CLAIMS FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Independent Claims in Excess of 3	$250 ($125) [N/A]	$420 ($210) [$105]	+$170 (+$85) [−$20]	+68% (+68%) [−16%]
Claims in Excess of 20	$60 ($30) [N/A]	$80 ($40) [$20]	+$20 (+$10) [−$10]	+33% (+33%) [−33%]
Multiple Dependent Claim	$450 ($225) [N/A]	$780 ($390) [$195]	+$330 (+$165) [−$30]	+73% (+73%) [−13%]

Currently, the Office charges a fee for filing, or later presenting at any other time, each independent claim in excess of 3, as well as each claim (whether dependent or independent) in excess of 20. In addition, any original application that is filed with, or amended to include, multiple dependent claims must pay the multiple dependent claim fee. Generally, a multiple dependent claim is a dependent claim which refers back in the alternative to more than one preceding independent or dependent claim.

The Office proposes to increase claim fees to facilitate an efficient and compact application examination process, which benefits the applicant and the USPTO through more effective administration of patent prosecution. Filing applications with the most prudent number of claims will enable prompt conclusion of application processing, because more succinct applications facilitate faster examination with an expectation of fewer errors.

On February 7, 2012, the Office delivered to the PPAC proposed excess claims fee amounts higher than those proposed here. Specifically, the Office proposed setting the fee for independent claims in excess of three to $460, for claims in excess of 20 to $100, and for multiple dependent claims to $860. In response to stakeholder feedback about the amount of the increases to excess claims and the growth rate of the patent operating reserve, the Office now proposes to set fees for independent claims in excess of three to $420, for claims in excess of 20 to $80, and for multiple dependent claims to $780. The Office proposes to increase the excess claims fees to facilitate an efficient and compact application examination process, which benefits the applicant and the *effective administration of the patent system.* Succinct applications with a prudent number of unambiguous claims facilitate faster examination with an expectation of fewer errors during examination.

Correct inventorship after first action on the merits (New):

TABLE 34—CORRECT INVENTORSHIP AFTER FIRST ACTION ON THE MERITS FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Correct Inventorship After First Action on the Merits (NEW)	N/A (N/A) [N/A]	$1,000 ($500) [$250]	+$1,000 (+$500) [+$250]	N/A (N/A) [N/A]

The Office needs to know who the inventors are to prepare patent application publications, conduct examination under 35 U.S.C. 102 and 103, and prevent double patenting. Changes to inventorship (e.g., adding previously unnamed persons as inventors or removing persons previously named as inventors) cause additional work for the Office. For instance, the Office may need to repeat prior art searches and/or reconsider patentability under sections 102 and 103, as well as reconsider the possibility of double patenting.

On February 7, 2012, the Office delivered to the PPAC two proposed fees: (1) a $3,000 fee to file an oath and declaration up to the notice of allowance; and (2) a $1,700 fee to correct inventorship during examination where it had not been provided before examination started. In response to stakeholder feedback, the Office now proposes to eliminate the $3,000 filing fee and reduce the $1,700 inventorship correction fee to $1,000. The inventorship correction fee is proposed to encourage reasonable diligence and a bona fide effort to ascertain the actual inventorship as early as possible and to provide that information to the Office prior to examination. The fee will also help offset the costs incurred by the Office when there is a change in inventorship.

The Office appreciates that inventorship may change as the result of a restriction requirement by the Office. Where inventorship changes as a result of a restriction requirement, the applicant should file a request to correct inventorship promptly (prior to first Office action on the merits) to avoid this fee for requests to correct inventorship in an application after the first Office action on the merits. Otherwise, the Office will incur the costs during examination related to the change in inventorship. Accordingly, the fee for requests to correct inventorship in an application after the first Office action on the merits fee would be required.

Derivation proceeding (New):

TABLE 35—DERIVATION PROCEEDING FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Derivation petition fee (NEW)	*$400 (N/A) [N/A]	$400 (N/A) [N/A]	$0 (N/A) [N/A]	0% (N/A) [N/A]
Derivation institution and trial fee (NEW)	N/A (N/A) [N/A]	$0 ($0) [$0]	$0 ($0) [$0]	N/A (N/A) [N/A]

* For purposes of comparing amounts, where a new fee has been proposed under 35 U.S.C. 41(d)(2) in the January and February 2012 Proposed Rules, that proposed fee is included in the current fee column and denoted with (*).

A derivation proceeding is a new trial proceeding conducted at the BPAI to determine whether an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application; and whether the earlier application claiming such invention was authorized. An applicant subject to the first-inventor-to-file provisions may file a petition to institute a derivation proceeding only within one year of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention. The petition must be supported by substantial evidence that the claimed invention was derived from an inventor named in the petitioner's application.

On February 10, 2012, the Office proposed under 35 U.S.C. 41(d) procedures for derivation proceedings before the BPAI. (Changes To Implement Derivation Proceedings, 77 FR 7028 (Feb. 10, 2012)). In that action, the Office proposed the $400 derivation petition fee. On February 7, 2012, the Office provided an initial fee proposal to the PPAC with the same fee, $400. Here, the Office proposes to retain the $400 derivation petition fee and to set an additional fee of $0 for a derivation institution and trial.

The Office estimates the $400 petition fee will recover its cost to process a petition for derivation. The Office also estimates that its costs for determining whether to institute and conducting a trial are approximately $40,000. However, the Office does not propose to recover the full cost of instituting and conducting the trial from the petitioner. Instead, by charging a $0 trial fee, the Office seeks to promote issuing patents to the actual inventor and to discourage a situation where another had derived the invention from the actual inventor and sought a patent on the derived invention. As there is no requirement for fees in derivation proceedings under the AIA, the Office has flexibility in setting the timing and amount of the

fee(s) that may be required for derivation.

Assignments Submitted Electronically Fee (New):

TABLE 36—FEE CHANGES FOR ASSIGNMENTS SUBMITTED ELECTRONICALLY

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity
Assignments Submitted Electronically (NEW)	$40 (N/A) [N/A]	$0 (N/A) [N/A]	−$40 (N/A) [N/A]	−100% (N/A) [N/A]
Assignments Not Submitted Electronically (NEW)	$40 (N/A) [N/A]	$40 (N/A) [N/A]	$0 (N/A) [N/A]	0% (N/A) [N/A]

Note: The current fee amount is $40 for submitting an assignment to the Office, regardless of method of submission.

Ownership of a patent gives the patent owner the right to exclude others from making, using, offering for sale, selling, or importing into the U.S. the invention claimed in a patent. Patent law provides for the transfer or sale of a patent, or of an application for patent, by an instrument in writing (i.e., an assignment). When executing an assignment, the patent owner may assign (e.g., transfer) the total or a percentage of interest, rights, and title of a patent to an assignee. When there is a completed assignment, the assignee becomes the owner of the patent and has the same rights of the original patentee. The Office records assignments sent to it, and the recording serves as public notice.

Assignment records are an important part of the business cycle—markets operate most efficiently when buyers and sellers can locate one another. If assignment records are incomplete, the business and research and development cycles could be disrupted because buyers face difficulty finding sellers, and potential innovators may not have a thorough understanding of the marketplace they are considering entering. The Office recognizes that complete patent assignment data disseminated to the public provides certainty in the technology space and helps to encourage innovation.

Therefore, more complete patent assignment records would produce a number of benefits for the public and IP stakeholders. The public would have a more comprehensive understanding of which entities hold and maintain U.S. patent rights. Patenting inventors and companies would better understand the competitive environment in which they are operating, allowing them to better allocate their own research and development resources, more efficiently obtain licenses, and accurately value patent portfolios.

Currently, a patent owner must pay $40 to record the assignment of patent rights. During FY 2011 approximately 90 percent of assignments were submitted electronically. This fee could be viewed as a barrier to those involved in patent and application assignments. Given that patent applications, patents, and the completeness of the patent record play an important role in the markets for innovation and the long-term health of the U.S. economy, the Office proposes to set two fees for recording an assignment. When an assignment is submitted using the Office's electronic system, the Office proposes to set the fee at $0. When an assignment is sent to the Office in a manner other than using the Office's electronic system, the Office proposes to set the fee at the current amount of $40. Providing these *patent prosecution options for applicants* benefits a majority of owners who typically record assignments. In addition, the *patent prosecution options for applicants* also benefit the overall IP system by reducing the financial barrier for recording patent ownership information and facilitating a more complete record of assigned applications and grants.

C. Fees With No Proposed Changes (or Changes of Less Than Plus or Minus 5 Percent and 10 Dollars)

The Office proposes to set all other categories of fees not discussed above at existing fee rates or at adjusted slightly fees (i.e., less than plus or minus 5 percent and 10 dollars) to be rounded to the nearest ten dollars by applying standard arithmetic rules. The resulting proposed fee amounts will be convenient to patent users and permit the Office to set micro entity fees at whole dollar amounts when applying the fee reduction. These other fees, such as those related to disclosing patent information to the public (excluding the PGPub fee) and patent attorney/agent enrollment and discipline fees, are already set at appropriate levels to achieve the Office's goals expressed in this rulemaking.

D. Overall Comparison of the Proposed Patent Fee Schedule to the Current Fees

Overall, the total amount of fees under this proposed rule that would be added together to obtain a basic patent decreases when compared to the total fees paid for the same services under the current fee schedule. This decrease is substantial (22 percent) from application to issue (*see* Table 37). When additional processing options such as RCEs are included, the decrease becomes smaller after the first RCE (11 percent) and eventually begins increasing after a second RCE (6 percent) (*see* Tables 38 and 39). The staging of appeal fees proposed in this rule offers similar decreases in the total fees paid when filing a notice of appeal. Under the proposed fee schedule, the total fees for both filing an appeal and to obtain a basic patent decrease from the current fee schedule (21 percent) (*see* Table 40). If the appeal is forwarded to the BPAI for a decision after the Examiner's Answer, then the total fees increase (23 percent) (*see* Table 40). Once an applicant has obtained a basic patent, the cost to maintain it remains substantially the same through the second stage maintenance fee. However, at the third stage maintenance fee, once the patent holder has more information on the value of the patent, the total fees increase (26 percent) (*see* Table 41). This structure reflects the key policy considerations *for fostering innovation, facilitating effective administration of the patent system,* and *offering patent*

prosecution options to applicants. Additional details about each of these payment structures are outlined below. To simplify the comparison among fee schedules, the time value of money has not been estimated in the examples below.

1. Routine Application Processing Fees and First RCE Fees Decrease

The total amount paid for routine fees to obtain a basic patent (i.e., filing, search, examination, publication, and issue) under the proposed fee structure will decrease compared to the current fee structure, as shown in Table 37. This overall decrease is possible because the decrease in pre-grant patent application publication and issue fees from $2,040 to $960 (a decrease of $1,080) more than offsets the increase in large entity filing, search, and examination fees from $1,250 to $1,600 (an increase of $350). The net effect is a $730 (or 22 percent) decrease in total fees paid under the proposed fee structure when compared to the current fee structure. This *fosters innovation* by reducing the cost to obtain a basic successful patent.

TABLE 37—COMPARISON OF PROPOSED PATENT FEE SCHEDULE TO THE CURRENT PATENT FEES FROM FILING THROUGH ISSUE

Fee	Current	Proposed on 2/7/2012	Proposed in this NPRM
Filing, Search, and Examination	$1,250	$1,840	$1,600
Pre-Grant Publication and Issue	2,040	960	960
Total	3,290	2,800	2,560

When an application for a first RCE is submitted to complete prosecution, the total fees beginning with filing to obtain a basic patent continue to remain less than would be paid under the current fee schedule. This overall decrease continues to be possible because of the decrease in pre-grant patent application publication and issue fees. The net effect of the proposed fee schedule, including a first RCE, is a $460 (or 11 percent) decrease in total fees paid under the proposed fee structure when compared to the current fee structure, as shown in Table 38.

TABLE 38—COMPARISON OF THE PROPOSED PATENT FEES TO THE CURRENT PATENT FEES FROM FILING THROUGH ISSUE WITH ONE RCE

Fee	Current	Proposed on 2/7/2012	Proposed in this NPRM
Filing, Search, and Examination	$1,250	$1,840	$1,600
First RCE	930	1,700	1,200
Pre-Grant Publication and Issue	2,040	960	960
Total	4,220	4,500	3,760

When adding a second RCE to prosecution, the total fees increase slightly, by $310 (or 6 percent), as shown in Table 39. However, the proposed total fees from applicant filing are $740 (or 12 percent) less than the total fees included in the proposal delivered to PPAC on February 7, 2012.

TABLE 39—COMPARISON OF THE PROPOSED PATENT FEES TO THE CURRENT PATENT FEES WITH TWO RCES

Fee	Current	Proposed on 2/7/2012	Proposed in this NPRM
Filing, Search, and Examination	$1,250	$1,840	$1,600
First RCE	930	1,700	1,200
Second and subsequent RCE	930	1,700	1,700
Pre-Grant Publication and Issue	2,040	960	960
Total	5,150	6,200	5,460

2. Initial Appeals Fees Decrease

Instead of filing an RCE, an applicant may choose to file a notice of appeal. When adding the notice of appeal and the briefing filing fees (allowing the applicant to receive the Examiner's Answer) to the fees to obtain a basic patent, the total fees from application filing decrease by $970 (or 21 percent) from the current total fees. If the prosecution issues are not resolved prior to forwarding an appeal to the Board, the fees increase because the Office proposes to recover more of the appeals cost. In that instance, fees will increase by $1,030 (or 23 percent) more than would be paid today for an appeal decision. However, under this new proposal, the staging of fees allows the applicant to pay less than under the current fee schedule in situations where an application is either allowed or prosecution is reopened before being forwarded to the Board. The proposed total fees from applicant filing are $1,240 (or 18 percent) less than the total fees included in the proposal that the Office delivered to PPAC on February 7, 2012.

TABLE 40—COMPARISON OF THE PROPOSED PATENT FEES AND CURRENT PATENT FEES, WITH AN APPEAL

Fee	Current	Proposed on 2/7/2012	Proposed in this NPRM
Filing, Search, and Examination	$1,250	$1,840	$1,600
Notice of Appeal and Filing a Brief	1,240	1,500	1,000
Pre-Grant Publication and Issue	2,040	960	960
Subtotal for Fees paid before Examiner's Answer	4,530	4,300	3,560
Appeal Forwarding Fee	NEW	2,500	2,000
Subtotal for Fees if Appeal is Forwarded to Board for Decision	4,530	6,800	5,560

3. Maintenance Fees Increase

When a patent holder begins maintaining an issued patent, he or she will pay $260, (or 6 percent) less than is paid under the current fee schedule from initial application filing through the first stage. To maintain the patent through second stage, a patent holder will pay $490 (large entity), or 7 percent more than is paid today under the current fee schedule. When a patent is maintained for full term, a patent holder will pay $3,160 (or 26 percent) more than would be paid under the current fee schedule. The most significant maintenance fee increase occurs after holding a patent for 11.5 years, which is when a patent holder will be in a better position to determine whether the benefit (value) from the patent exceeds the cost (maintenance fee) to maintain the patent.

TABLE 41—COMPARISON OF THE PROPOSED PATENT FEE SCHEDULES TO THE CURRENT FEES, LIFE OF PATENT

Fee	Current	Proposed on 2/7/2012	Proposed in this NPRM
Filing, Search, and Examination	$1,250	$1,840	$1,600
Pre-Grant Publication and Issue	2,040	960	960
Total Through Issue	3,290	2,800	2,560
First Stage Maintenance—3.5 years	1,130	1,600	1,600
Cumulative Subtotal	4,420	4,400	4,160
Second Stage Maintenance—7.5 years	2,850	3,600	3,600
Cumulative Subtotal	7,270	8,000	7,760
Third Stage Maintenance—11.5 years	4,730	7,600	7,400
Total Fees for Life of Patent	12,000	15,600	15,160

VI. Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Parts 1 and 41, are proposed to be amended as follows:

Section 1.16: Sections 1.16(a)(1), (b)(1), (c)(1), (d), (e)(1), (f) through (s) would be amended to set forth the application filing, excess claims, search, examination, and application size fees for patent applications filed as authorized under section 10 of the Act. This section would no longer distinguish between applications filed before or after December 8, 2004, because section 11 of the AIA no longer makes the distinction. The changes to the fee amounts indicated in section 1.16 are shown in Table 42.

TABLE 42

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.16(a)(1)	1011/2011/3011	Basic Filing Fee—Utility	380	190	280	140	70
1.16(a)(1)	4011	Basic Filing Fee—Utility (electronic filing for small entities).	n/a	95	n/a	70	n/a
1.16(b)(1)	1012/2012/3012	Basic Filing Fee—Design	250	125	180	90	45
1.16(b)(1)	1017/2017/3017	Basic Filing Fee—Design (CPA).	250	125	180	90	45
1.16(c)(1)	1013/2013/3013	Basic Filing Fee—Plant	250	125	180	90	45
1.16(d)	1005/2005/3005	Provisional Application Filing Fee.	250	125	260	130	65
1.16(e)(1)	1014/2014/3014	Basic Filing Fee—Reissue	380	190	280	140	70
1.16(e)(1)	1019/2019/3019	Basic Filing Fee—Reissue (CPA).	380	190	280	140	70

TABLE 42—Continued

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.16(f)	1051/2051/3051	Surcharge—Late Filing Fee, Search Fee, Examination Fee or Oath or Declaration.	130	65	140	70	35
1.16(g)	1052/2052/3052	Surcharge—Late Provisional Filing Fee or cover sheet.	50	25	60	30	15
1.16(h)	1201/2201/3201	Independent Claims in Excess of Three.	250	125	420	210	105
1.16(h)	1204/2204/3204	Reissue Independent Claims in Excess of Three.	250	125	420	210	105
1.16(i)	1202/2202/3202	Claims in Excess of 20	60	30	80	40	20
1.16(i)	1205/2205/3205	Reissue Claims in Excess of 20	60	30	80	40	20
1.16(j)	1203/2203/3203	Multiple Dependent Claim	450	225	780	390	195
1.16(k)	1111/2111/3111	Utility Search Fee	620	310	600	300	150
1.16(l)	1112/2112/3112	Design Search Fee	120	60	120	60	30
1.16(m)	1113/2113/3113	Plant Search Fee	380	190	380	190	95
1.16(n)	1114/2114/3114	Reissue Search Fee	620	310	600	300	150
1.16(o)	1311/2311/3311	Utility Examination Fee	250	125	720	360	180
1.16(p)	1312/2312/3312	Design Examination Fee	160	80	460	230	115
1.16(q)	1313/2313/3313	Plant Examination Fee	200	100	580	290	145
1.16(r)	1314/2314/3314	Reissue Examination Fee	750	375	2,160	1,080	540
1.16(s)	1081/2081/3081	Utility Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	310	155	400	200	100
1.16(s)	1082/2082/3082	Design Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	310	155	400	200	100
1.16(s)	1083/2083/3083	Plant Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	310	155	400	200	100
1.16(s)	1084/2084/3084	Reissue Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	310	155	400	200	100
1.16(s)	1085/2085/3085	Provisional Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	310	155	400	200	100

Section 1.17: Sections 1.17(a)(1) through (a)(5), (c), (e) through (t) would be amended and (d) and (e) would be added to set forth the application processing fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in section 1.17 are shown in Table 43.

TABLE 43

CFR section	Fee Code	Description	Current fees (dollars)		Proposed fees dollars)		
			Large	Small	Large	Small	Micro
1.17(a)(1)	1251/2251/3251	Extension for Response Within First Month.	150	75	200	100	50
1.17(a)(2)	1252/2252/3252	Extension for Response Within Second Month.	560	280	600	300	150
1.17(a)(3)	1253/2253/3253	Extension for Response Within Third Month.	1,270	635	1,400	700	350
1.17(a)(4)	1254/2254/3254	Extension for Response Within Fourth Month.	1,980	990	2,200	1,100	550
1.17(a)(5)	1255/2255/3255	Extension for Response Within Fifth Month.	2,690	1,345	3,000	1,500	750
1.17(c)	1817/2817/3817	Request for Prioritized Examination.	4,800	2,400	4,000	2,000	1,000
1.17(d)	NEW	Correct Inventorship After First Action on Merits.	NEW	NEW	1,000	500	250

TABLE 43—Continued

CFR section	Fee Code	Description	Current fees (dollars)		Proposed fees dollars)		
			Large	Small	Large	Small	Micro
1.17(e)	1801/2801/3801	Request for Continued Examination (RCE) (1st request) (*see* 37 CFR 1.114).	930	465	1,200	600	300
1.17(e)	NEW	Request for Continued Examination (RCE) (2nd and subsequent request).	NEW	NEW	1,700	850	425
1.17(f)	1462/2462/3462	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(f) (Group I).	400	n/a	400	200	100
1.17(g)	1463/2463/3463	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(g) (Group II).	200	n/a	200	100	50
1.17(h)	1464/2464/3464	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(h) (Group III).	130	n/a	140	70	35
1.17(i)	1053/2053/3053	Non-English Specification	130	n/a	140	70	35
1.17(i)	1808	Processing Fee, Except in Provisional Applications.	130	n/a	130	n/a	n/a
1.17(i)	1803	Request for Voluntary Publication or Republication.	130	n/a	130	n/a	n/a
1.17(k)	1802	Request for Expedited Examination of a Design Application.	900	n/a	900	450	225
1.17(l)	1452/2452/3452	Petition to Revive Unavoidably Abandoned Application.	620	310	640	320	160
1.17(m)	1453/2453/3453	Petition to Revive Unintentionally Abandoned Application.	1,860	930	1,900	950	475
1.17(p)	1806/2806/3806	Submission of an Information Disclosure Statement.	180	n/a	180	90	45
1.17(q)	1807	Processing Fee for Provisional Applications.	50	n/a	50	n/a	n/a
1.17(r)	1809/2809/3809	Filing a Submission After Final Rejection (*see* 37 CFR 1.129(a)).	810	405	840	420	210
1.17(s)	1810/2810/3810	For Each Additional Invention to be Examined (*see* 37 CFR 1.129(b)).	810	405	840	420	210
1.17(t)	1454/2454/3454	Acceptance of an Unintentionally Delayed Claim for Priority, or for Filing a Request for the Restoration of the Right of Priority.	1,410	n/a	1,420	710	355

§ 1.17 Patent application and reexamination processing fees.

(d) For correction of inventorship in an application after the first Office action on the merits:

By a micro entity (§ 1.29(a))	$250.00
By a small entity (§ 1.27(a))	$500.00
By other than a small or micro entity	$1,000.00

§ 1.17 Patent application and reexamination processing fees.

(e) To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

By a micro entity	$300.00
By a small entity (§ 1.27(a) of this title)	$600.00
By other than a small or micro entity	$1,200.00

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

By a micro entity	$425.00
By a small entity (§ 1.27(a) of the title)	$850.00
By other than a small or micro entity	$1,700.00

Section 1.18: Sections 1.18(a) through (f) would be amended to set forth the patent issue fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.18 are shown in Table 44.

TABLE 44

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.18(a)	1501/2501/3501	Utility Issue Fee	1,740	870	960	480	240

TABLE 44—Continued

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.18(a)	1511/2511/3511	Reissue Issue Fee	1,740	870	960	480	240
1.18(b)	1502/2502/3502	Design Issue Fee	990	495	560	280	140
1.18(c)	1503/2503/3503	Plant Issue Fee	1,370	685	760	380	190
1.18(d)(1)	1504	Publication Fee for Early, Voluntary, or Normal Publication.	300	n/a	0	n/a	n/a
1.18(d)(2)	1505	Publication Fee for Republication.	300	n/a	300	n/a	n/a
1.18(e)	1455	Filing an Application for Patent Term Adjustment.	200	n/a	200	n/a	n/a
1.18(f)	1456	Request for Reinstatement of Term Reduced.	400	n/a	400	n/a	n/a

§ 1.18 Patent post allowance (including issue) fees.

(d)(1) Publication fee	$0.00
(d)(2) Republication fee (§ 1.221(a))	$300.00

Section 1.19: Sections 1.19(a)(1) through (a)(3), (b)(1)(i)(A) through (b)(1)(i)(D), (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(ii)(C), (b)(2)(i)(A), (b)(2)(i)(B), (b)(2)(ii), (b)(3), (b)(4), and (c) through (g) would be amended to set forth the patent document supply fees as authorized under section 10 of the Act. The changes to the fee amounts set are indicated in § 1.19 are shown in Table 45.

TABLE 45

CFR section	Fee code	Description	Current fees with CPI (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.19(a)(1)	8001	Printed Copy of Patent w/o Color, Delivery by USPS, USPTO Box, or Electronic Means.	3	n/a	3	n/a	n/a
1.19(a)(2)	8003	Printed Copy of Plant Patent in Color.	15	n/a	15	n/a	n/a
1.19(a)(3)	8004	Color Copy of Patent (other than plant patent) or SIR Containing a Color Drawing.	25	n/a	25	n/a	n/a
1.19(a)(1)	8005	Patent Application Publication (PAP).	3	n/a	3	n/a	n/a
1.19(b)(1)(i)(A)	8007	Copy of Patent Application as Filed.	20	n/a	20	n/a	n/a
1.19(b)(1)(i)(B)	8008	Copy of Patent-Related File Wrapper and Contents of 400 or Fewer Pages, if Provided on Paper.	200	n/a	200	n/a	n/a
1.19(b)(1)(i)(C)	8009	Additional Fee for Each Additional 100 Pages of Patent-Related File Wrapper and (Paper) Contents, or Portion Thereof.	40	n/a	40	n/a	n/a
1.19(b)(1)(i)(D)	8010	Individual Application Documents, Other Than Application as Filed, per Document.	25	n/a	25	n/a	n/a
1.19(b)(1)(ii)(A)	8007	Copy of Patent Application as Filed.	20	n/a	20	n/a	n/a
1.19(b)(1)(ii)(B)	8011	Copy of Patent-Related File Wrapper and Contents if Provided Electronically or on a Physical Electronic Medium as Specified in 1.19(b)(1)(ii).	55	n/a	55	n/a	n/a
1.19(b)(1)(ii)(C)	8012	Additional Fee for Each Continuing Physical Electronic Medium in Single Order of 1.19(b)(1)(ii)(B).	15	n/a	15	n/a	n/a
1.19(b)(1)(iii)(A)	8007	Copy of Patent Application as Filed.	20	n/a	20	n/a	n/a

TABLE 45—Continued

CFR section	Fee code	Description	Current fees with CPI (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.19(b)(1)(iii)(B)	8011	Copy of Patent-Related File Wrapper and Contents if Provided Electronically or on a Physical Electronic Medium.	55	n/a	55	n/a	n/a
1.19(b)(2)(i)(A) ..	8041	Copy of Patent-Related File Wrapper Contents That Were Submitted and Are Stored on Compact Disk or Other Electronic Form (e.g., compact disks stored in artifact folder), Other Than as Available in 1.19(b)(1); First Physical Electronic Medium in a Single Order.	55	n/a	55	n/a	n/a
1.19(b)(2)(i)(B) ..	8042	Additional Fee for Each Continuing Copy of Patent-Related File Wrapper Contents as Specified in 1.19(b)(2)(i)(A).	15	n/a	15	n/a	n/a
1.19(b)(2)(ii)	8043	Copy of Patent-Related File Wrapper Contents That Were Submitted and are Stored on Compact Disk, or Other Electronic Form, Other Than as Available in 1.19(b)(1); If Provided Electronically Other Than on a Physical Electronic Medium, per Order.	55	n/a	55	n/a	n/a
1.19(b)(3)	8013	Copy of Office Records, Except Copies of Applications as Filed.	25	n/a	25	n/a	n/a
1.19(b)(4)	8014	For Assignment Records, Abstract of Title and Certification, per Patent.	25	n/a	25	n/a	n/a
1.19(c)	8904	Library Service	50	n/a	50	n/a	n/a
1.19(d)	8015	List of U.S. Patents and SIRs in Subclass.	3	n/a	3	n/a	n/a
1.19(e)	8016	Uncertified Statement re Status of Maintenance Fee Payments.	10	n/a	10	n/a	n/a
1.19(f)	8017	Copy of Non-U.S. Document	25	n/a	25	n/a	n/a
1.19(g)	8050	Petitions for Documents In Form Other Than That Provided By This Part, or In Form Other Than That Generally Provided by Director, to be Decided in Accordance With Merits.	at cost	n/a	at cost	n/a	n/a

Section 1.20: Sections 1.20(a), (b), (c)(1) through (c)(4), (c)(6), (c)(7), (d) through (k) would be amended to set forth the reexamination excess claims fees, disclaimer fees, and maintenance fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.20 are shown in Table 46.

TABLE 46

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.20(a)	1811	Certificate of Correction	100	n/a	100	n/a	n/a
1.20(b)	1816	Processing Fee for Correcting Inventorship in a Patent.	130	n/a	130	n/a	n/a
1.20(c)(1)	1812	Request for *Ex Parte* Reexamination.	2,520	n/a	15,000	7,500	3,750

TABLE 46—Continued

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.20(c)(3)	1821/2821/3821	Reexamination Independent Claims in Excess of Three and also in Excess of the Number of Such Claims in the Patent Under Reexamination.	250	125	420	210	105
1.20(c)(4)	1822/2822/3822	Reexamination Claims in Excess of 20 and Also in Excess of the Number of Claims in the Patent Under Reexamination.	60	30	80	40	20
1.20(c)(6)	NEW	Filing a Petition in a Reexamination Proceeding, Except for Those Specifically Enumerated in §§ 1.550(i) and 1.937(d).	NEW	NEW	1,940	970	485
1.20(c)(7)	1812	For a Refused Request for *Ex parte* Reexamination Under § 1.510 (included in the request for *ex parte* reexamination fee).	830	n/a	3,600	1,800	900
1.20(d)	1814/2814	Statutory Disclaimer, Including Terminal Disclaimer.	160	80	160	n/a	n/a
1.20(e)	1551/2551/3551	Maintenance Fee Due at 3.5 Years.	1,130	565	1,600	800	400
1.20(f)	1552/2552/3552	Maintenance Fee Due at 7.5 Years.	2,850	1,425	3,600	1,800	900
1.20(g)	1553/2553/3553	Maintenance Fee Due at 11.5 Years.	4,730	2,365	7,400	3,700	1,850
1.20(h)	1554/2554/3554	Maintenance Fee Surcharge—3.5. Years—Late Payment Within 6 Months.	150	75	160	80	40
1.20(h)	1555/2555/3555	Maintenance Fee Surcharge—7.5. Years—Late Payment Within 6 Months.	150	75	160	80	40
1.20(h)	1556/2556/3556	Maintenance Fee Surcharge—11.5. Years—Late Payment Within 6 Months.	150	75	160	80	40
1.20(i)(1)	1557/2557/3557	Maintenance Fee Surcharge After Expiration—Late Payment is Unavoidable.	700	n/a	700	350	175
1.20(i)(2)	1558/2558/3558	Maintenance Fee Surcharge After Expiration—Late Payment is Unintentional.	1,640	n/a	1,640	820	410
1.20(j)(1)	1457	Extension of Term of Patent	1,120	n/a	1,120	n/a	n/a
1.20(j)(2)	1458	Initial Application for Interim Extension (*see* 37 CFR 1.790).	420	n/a	420	n/a	n/a
1.20(j)(3)	1459	Subsequent Application for Interim Extension (*see* 37 CFR 1.790).	220	n/a	220	n/a	n/a
1.20(k)(1)	NEW	Processing and Treating a Request for Supplemental Examination.	NEW	NEW	4,400	2,200	1,100
1.20(k)(2)	NEW	*Ex Parte* Reexamination Ordered as a Result of a Supplemental Examination Proceeding.	NEW	NEW	13,600	6,800	3,400
1.20(k)(3)(i)	NEW	For Processing and Treating, in a Supplemental Examination Proceeding, a Non-Patent Document Over 20 Sheets in Length, per Document Between 21–50 Pages.	NEW	NEW	180	90	45

TABLE 46—Continued

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.20(k)(3)(ii)	NEW	For Processing and Treating, in a Supplemental Examination Proceeding, a Non-Patent Document Over 20 Sheets in Length, per Document for Each Additional 50 Sheets or Fraction Thereof.	NEW	NEW	280	140	70

Section 1.21: Sections 1.21(a)(1)(i), (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(10), (a)(2), (a)(4), (a)(4)(i), (a)(5)(i), (a)(5)(ii), (a)(7)(i) through (a)(7)(iv), (a)(8), (a)(9)(i), (a)(9)(ii), (a)(10), (b)(3), (e), (g) through (k), and (n) would be amended to set forth miscellaneous fees and charges as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.21 are shown in Table 47.

TABLE 47

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.21(a)(1)(i)	9001	Application Fee (non-refundable).	40	n/a	40	n/a	n/a
1.21(a)(1)(ii)(A)	9010	For Test Administration by Commercial Entity.	200	n/a	200	n/a	n/a
1.21(a)(1)(ii)(B)	9011	For Test Administration by the USPTO.	450	n/a	450	n/a	n/a
1.21(a)(2)	9003	Registration to Practice or Grant of Limited Recognition under § 11.9(b) or (c).	100	n/a	100	n/a	n/a
1.21(a)(2)	9025	Registration to Practice for Change of Practitioner Type.	100	n/a	100	n/a	n/a
1.21(a)(4)	9005	Certificate of Good Standing as an Attorney or Agent.	10	n/a	10	n/a	n/a
1.21(a)(4)(i)	9006	Certificate of Good Standing as an Attorney or Agent, Suitable for Framing.	20	n/a	20	n/a	n/a
1.21(a)(5)(i)	9012	Review of Decision by the Director of Enrollment and Discipline under § 11.2(c).	130	n/a	130	n/a	n/a
1.21(a)(5)(ii)	9013	Review of Decision of the Director of Enrollment and Discipline under § 11.2(d).	130	n/a	130	n/a	n/a
1.21(a)(7)(i)	9015	Annual Fee for Registered Attorney or Agent in Active Status.	118	n/a	120	n/a	n/a
1.21(a)(7)(ii)	9016	Annual Fee for Registered Attorney or Agent in Voluntary Inactive Status.	25	n/a	25	n/a	n/a
1.21(a)(7)(iii)	9017	Requesting Restoration to Active Status from Voluntary Inactive Status.	50	n/a	50	n/a	n/a
1.21(a)(7)(iv)	9018	Balance of Annual Fee Due upon Restoration to Active Status from Voluntary Inactive Status.	93	n/a	100	n/a	n/a
1.21(a)(8)	9019	Annual Fee for Individual Granted Limited Recognition.	118	n/a	120	n/a	n/a
1.21(a)(9)(i)	9020	Delinquency Fee for Annual Fee.	50	n/a	50	n/a	n/a
1.21(a)(9)(ii)	9004	Reinstatement to Practice	100	n/a	100	n/a	n/a
1.21(a)(10)	9014	Application Fee for Person Disciplined, Convicted of a Felony or Certain Misdemeanors under § 11.7(h).	1,600	n/a	1,600	n/a	n/a
1.21(e)	8020	International Type Search Report.	40	n/a	40	n/a	n/a

TABLE 47—Continued

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.21(g)	8902	Self-Service Copy Charge, per Page.	0.25	n/a	0.25	n/a	n/a
1.21(h)(1)	NEW	Recording Each Patent Assignment, Agreement or Other Paper, per Property if Submitted Electronically.	NEW	NEW	0	n/a	n/a
1.21(h)(2)	8021	Recording Each Patent Assignment, Agreement or Other Paper, per Property if not Submitted Electronically.	40	n/a	40	n/a	n/a
1.21(i)	8022	Publication in Official Gazette ..	25	n/a	25	n/a	n/a
1.21(j)	8023	Labor Charges for Services, per Hour or Fraction Thereof.	40	n/a	40	n/a	n/a
1.21(k)	8024	Unspecified Other Services, Excluding Labor.	at cost	n/a	at cost	n/a	n/a
1.21(k)	9024	Unspecified Other Services, Excluding Labor.	at cost	n/a	at cost	n/a	n/a
1.21(n)	8026	Handling Fee for Incomplete or Improper Application.	130	n/a	130	n/a	n/a

§ 1.21 Miscellaneous fees and charges.

(h) For recording each assignment, agreement, or other paper relating to the property in a patent or application, per property:

(1) If submitted electronically	$0.00
(2) If not submitted electronically	$40.00

Section 1.445: Sections 1.445(a)(1) through (a)(4) would be amended to set forth the international application filing, processing, and search fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.445 are shown in Table 48.

TABLE 48

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.445(a)(1)	1601	PCT International Stage Transmittal Tee.	240	n/a	240	120	60
1.445(a)(2)	1602	PCT International Stage Search Fee—Regardless of Whether There is a Corresponding Application (*see* 35 U.S.C. 361(d) and PCT Rule 16).	2,080	n/a	2,080	1,040	520
1.445(a)(3)	1604	PCT International Stage Supplemental Search Fee When Required, per Additional Invention.	2,080	n/a	2,080	1,040	520
1.445(a)(4)	1621	Transmitting Application to International Bureau to Act as Receiving Office.	240	n/a	240	120	60

Section 1.482: Sections 1.482(a)(1) and (a)(2) would be amended to set forth the international application filing, processing, and search fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.445 are shown in Table 49.

TABLE 49

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.482(a)(1)(i)	1605	PCT International Stage Preliminary Examination Fee—U.S. was the ISA.	600	n/a	600	300	150

TABLE 49—Continued

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.482(a)(1)(ii)	1606	PCT International Stage Preliminary Examination Fee—U.S. was not the ISA.	750	n/a	760	380	190
1.482(a)(2)	1607	PCT International Stage Supplemental Examination Fee per Additional Invention.	600	n/a	600	300	150

Section 1.492: Sections 1.492(a), (b)(1) through (b)(4), (c)(2), (d) through (f), (h), (i) and (j) would be amended to set forth the application filing, excess claims, search, examination, and application size fees for international patent applications entering the national stage as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.492 are shown in Table 50.

TABLE 50

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
1.492(a)	1631/2631	Basic PCT National Stage Fee	380	190	280	140	70
1.492(b)(1)	1640/2640	PCT National Stage Search Fee—U.S. was the ISA or IPEA and All Claims Satisfy PCT Article 33(1)–(4).	0	0	0	0	0
1.492(b)(2)	1641/2641	PCT National Stage Search Fee—U.S. was the ISA.	120	60	120	60	30
1.492(b)(3)	1642/2642	PCT National Stage Search Fee—Search Report Prepared and Provided to USPTO.	490	245	480	240	120
1.492(b)(4)	1632/2632	PCT National Stage Search Fee—All Other Situations.	620	310	600	300	150
1.492(c)(1)	1643/2643	PCT National Stage Examination Fee—U.S. was the ISA or IPEA and All Claims Satisfy PCT Article 33(1)–(4).	0	0	0	0	0
1.492(c)(2)	1633/2633	National Stage Examination Fee—All Other Situations.	250	125	720	360	180
1.492(d)	1614/2614	PCT National Stage Claims—Extra Independent (over three).	250	125	420	210	105
1.492(e)	1615/2615	PCT National Stage Claims—Extra Total (over 20).	60	30	80	40	20
1.492(f)	1616/2616	PCT National Stage Claims—Multiple Dependent.	450	225	780	390	195
1.492(h)	1617/2617	Search Fee, Examination Fee or Oath or Declaration After Thirty Months From Priority Date.	130	65	140	70	35
1.492(i)	1618/2618	English Translation After Thirty Months From Priority Date.	130	n/a	140	70	35
1.492(j)	1681/2681	PCT National Stage Application Size Fee—for Each Additional 50 Sheets that Exceeds 100 Sheets.	310	155	400	200	100

Section 41.20: Sections 41.20(a) and (b)(1) through (b)(4) would be amended to set forth the appeal fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 41.20 are shown in Table 51.

TABLE 51

CFR section	Fee code	Description	Current fees (dollars)		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
41.20(a)	1405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3.	400	n/a	400	n/a	n/a
41.20(b)(1)	1401/2401	Notice of Appeal	620	310	1,000	500	250
41.20(b)(2)(i)	1402/2402	Filing a Brief in Support of an Appeal in an Application or *Ex Parte* Reexamination Proceeding.	620	310	0	0	0
41.20(b)(2)(ii)	NEW	Filing a Brief in Support of an Appeal in an *Inter Partes* Reexamination Proceeding.	NEW	NEW	2,000	1,000	500
41.20(b)(3)	1403/2403	Request for Oral Hearing	1,240	620	1,300	650	325
41.20(b)(4)	NEW	Forwarding an Appeal in an Application or *Ex Parte* Reexamination Proceeding to the Board.	NEW	NEW	2,000	1,000	500

Section 41.20 Fees: Section 41.20 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 41.20 Fees.

* * * * *

(a) Petition fee. The fee for filing a petition under this part is $400.00.

(b) Appeal fees.

(1) For filing a notice of appeal from the examiner to the Board:

By a micro entity (§ 1.29(a))	$250.00
By a small entity (§ 1.27(a))	$500.00
By other than a small or micro entity	$1,000.00

(2)(i) For filing a brief in support of an appeal in an application or *ex parte* reexamination proceeding: $0.00.

(ii) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal in an *inter partes* reexamination proceeding:

By a micro entity (§ 1.29(a))	$500.00
By a small entity (§ 1.27(a))	$1,000.00
By other than a small or micro entity	$2,000.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a micro entity (§ 1.29(a))	$325.00
By a small entity (§ 1.27(a))	$650.00
By other than a small or micro entity	$1,300.00

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

By a micro entity (§ 1.29(a))	$500.00
By a small entity (§ 1.27(a))	$1,000.00
By other than a small or micro entity	$2,000.00

Section 41.37: Section 41.37 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 41.37 Appeal brief.

(a) Timing. Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31. The appeal brief fee in an application or *ex parte* reexamination proceeding is $0.00, but if the appeal results in an Examiner's Answer, the appeal forwarding fee set forth in § 41.20(b)(4) must be paid within the time period specified in § 41.48 to avoid dismissal of an appeal.

(b) Failure to file a brief. On failure to file the brief within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

* * * * *

Section 41.45: Section 41.45 would be added to read as follows:

§ 41.45 Appeal forwarding fee.

(a) *Timing.* Appellant in an application or *ex parte* reexamination proceeding must pay the fee set forth in § 41.20(b)(4) within the later of two months from the date of either the examiner's answer, or a decision refusing to grant a petition under § 1.181 of this title to designate a new ground of rejection in an examiner's answer.

(b) *Failure to pay appeal forwarding fee.* On failure to pay the fee set forth in § 41.20(b)(4) within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c) *Extensions of time.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

Section 42.15: Sections 42.15 (a) through (d) would be amended to set forth the *inter partes* review and post-grant review or covered business method patent review of patent fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 42.15 are shown in Table 52.

TABLE 52

CFR section	Fee code	Description	Current fees		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
42.15(a)(1)	NEW	*Inter Partes* Review Request Fee.	NEW	NEW	9,000	n/a	n/a
42.15(a)(2)	NEW	*Inter Partes* Review Post-Institution Fee.	NEW	NEW	14,000	n/a	n/a

TABLE 52—Continued

CFR section	Fee code	Description	Current fees		Proposed fees (dollars)		
			Large	Small	Large	Small	Micro
42.15(a)(3)	NEW	In Addition to the *Inter Partes* Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	NEW	NEW	200	n/a	n/a
42.15(a)(4)	NEW	In addition to the *Inter Partes* Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	NEW	NEW	400	n/a	n/a
42.15(b)(1)	NEW	Post Grant or Covered Business Method Patent Review Request Fee.	NEW	NEW	12,000	n/a	n/a
42.15(b)(2)	NEW	Post Grant or Covered Business Method Patent Review Post-Institution Fee.	NEW	NEW	18,000	n/a	n/a
42.15(b)(3)	NEW	In Addition to the Post Grant or Covered Business Method Patent Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	NEW	NEW	250	n/a	n/a
42.15(b)(4)	NEW	In Addition to the Post Grant or Covered Business Method Patent Review Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	NEW	NEW	550	n/a	n/a
42.15(c)(1)	NEW	Derivation Petition	NEW	NEW	400	n/a	n/a
42.15(c)(2)	NEW	Derivation Institution and Trial Fee.	NEW	NEW	0	0	0
42.15(d)	NEW	Request to Make a Settlement Agreement Available.	NEW	NEW	400	n/a	n/a

Section 42.15: Section 42.15 would be added to read as follows:

§ 42.15 Fees.

(a) On filing a petition for *inter partes* review of a patent, payment of the following fees are due:

(1) *Inter Partes* Review request fee	$9,000.00
(2) *Inter Partes* Review Post-Institution fee	$14,000.00
(3) In addition to the *Inter Partes* Review request fee, for requesting review of each claim in excess of 20 ..	$200.00
(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting review of each claim in excess of 15	$400.00

(b) On filing a petition for post-grant review or covered business method patent review of a patent, payment of the following fees are due:

(1) Post Grant or Covered Business Method Patent Review request fee	$12,000.00
(2) Post Grant or Covered Business Method Patent Review Post-Institution fee	$18,000.00
(3) In addition to the Post Grant or Covered Business Method Patent Review request fee, for requesting review of each claim in excess of 20	$250.00
(4) In addition to the Post Grant or Covered Business Method Patent Review request fee Post-Institution request fee, for requesting review of each claim in excess of 15	$550.00

(c) On the filing of a petition for a derivation proceeding, payment of the following fees is due:

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(1) Derivation petition fee	$400.00
(2) Derivation institution and trial fee	$0.00

(d) Any request requiring payment of a fee under this part, including a written request to make a settlement agreement available: $400.00

Rulemaking Considerations

A. Regulatory Flexibility Act

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) to examine the impact of the Office's proposed rules implementing the fee-setting provisions of the Leahy-Smith America Invents Act (Pub. L. 112–29, 125 Stat. 284) (the Act) on small entities and to seek the public's views. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

While the Office welcomes all comments on this IRFA, it particularly seeks comments describing the type and extent of the impact of the proposed patent fees on commenters' specific businesses. In describing the impact, the Office requests biographic detail about the impacted businesses or concerns, including the size, average annual revenue, past patent activity (e.g., applications submitted, contested cases pursued, maintenance fees paid, patents abandoned, etc.), and planned patent activity of the impacted business or concern, where feasible. The Office will use this information to further assess the impact of the proposed rule on small entities. Where possible, comments should also describe any recommended

alternative methods of setting and adjusting patent fees that would further reduce the impact on small entities.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. A Description of the Reasons Why the Action by the agency Is Being Considered

Section 10 of the Act authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed, or materials furnished, by the Office. Section 10 prescribes that patent fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs to the Office with respect to such patent fees. The proposed fee schedule will recover the aggregate cost of patent operations while facilitating the effective administration of the U.S. patent system. The reasons why the rulemaking is being considered are further discussed in section 6.i below and elsewhere in this IRFA and the NPRM.

2. The Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rules is to implement the fee setting provisions of section 10 of the Act by setting or adjusting patent fees to recover the aggregate cost of patent operations, including administrative costs, while facilitating the effective administration of the U.S. patent system. The Act strengthened the patent system by affording the USPTO the ''resources it requires to clear the still sizeable backlog of patent applications and move forward to deliver to all American inventors the first rate service they deserve.'' H.R. Rep. No. 112–98(I), at 163 (2011). In setting fees under the Act, the Office seeks to secure a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including for achieving strategic and operational goals, such as reducing the current patent application backlog, decreasing patent pendency, improving patent quality, upgrading its patent business information technology (IT) capability and infrastructure, and implementing a sustainable funding model. As part of these efforts, the Office will use a portion of the patent fees to establish a patent operating reserve, a step toward achieving the Office's financial sustainability goals. In addition, the Office proposes to include multipart and staged fees for requests for continued examination and appeals, both of which aim to foster innovation and increase prosecution options. Additional information on the Office's strategic goals may be found in the *USPTO 2010–2015 Strategic Plan,* available at *http://www.uspto.gov/about/stratplan/USPTO_2010_2015_Strategic_Plan.pdf.* Additional information on the Office's goals and operating requirements may be found in the *USPTO FY 2013 President's Budget* (Budget), available at *http://www.uspto.gov/about/stratplan/budget/fy13pbr.pdr.* The legal basis for the proposed rules is section 10 of the Act.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

SBA Size Standard

The Small Business Act (SBA) size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the Small Business Administration, the Office formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 60 (Dec. 12, 2006). The Office's alternate small business size standard consists of SBA's previously established size standard for entities entitled to pay reduced patent fees. *See* 13 CFR 121.802.

Unlike SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The Office's definition of a small business concern for RFA purposes is a business or other concern that: (1) meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office at 63 (Dec. 12, 2006).

If a patent applicant self-identifies on a patent application as qualifying as a small entity for reduced patent fees under the Office's alternative size standard, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Small Entities Affected by This Rule

Small Entity Defined

The Act provides that fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent'' with respect to the application of such fees to any ''small entity'' (as defined in 37 CFR 1.27) that qualifies for reduced fees under 35 U.S.C. 41(h)(1). 35 U.S.C. 41(h)(1), in turn, provides that certain patent fees ''shall be reduced by 50 percent'' for a small business concern as defined by section 3 of the SBA, and to any independent inventor or nonprofit organization as defined in regulations described by the Director.

Micro Entity Defined

Section 10(g) of the Act creates a new category of entity called a ''micro entity.'' 35 U.S.C. 123; *see also* 125 Stat. at 318–19. Section 10(b) of the Act provides that the fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced * * * by 75 percent with respect to the application of such fees to any micro entity as defined by [new 35 U.S.C.] 123.'' 125 Stat. at 315–17.

35 U.S.C. 123(a) defines a ''micro entity'' as an applicant who certifies that the applicant: (1) Qualifies as a small entity as defined in 37 CFR 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or Patent Cooperation

Treaty (PCT) applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and (4) has not assigned, granted, conveyed, and is not under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity exceeding the income limit set forth in (3) above. *See* 125 Stat. at 318.

35 U.S.C. 123(d) also defines a ''micro entity'' as an applicant who certifies that: (1) The applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(1) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

Estimate of Number of Small Entities Affected

The changes in the proposed rules will apply to any entity, including small and micro entities, that pays any patent fee set forth in the notice of proposed rulemaking. The reduced fee rates (50 percent for small entities and 75 percent for micro entities) will apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The Office reviews historical data to estimate the percentages of application filings asserting small entity status. Table 53 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

TABLE 53—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS*

	FY 2011**	FY 2010	FY 2009	FY 2008	FY 2007	Average
Utility:						
All	504,089	479,332	458,901	466,258	439,578	469,632
Small	126,878	122,329	113,244	116,891	112,953	118,459
% Small	25.2	25.5	24.7	25.1	25.7	25.2
Reissue:						
All	1,139	1,138	1,035	1,080	1,057	1,090
Small	265	235	237	258	238	247
% Small	23.3	20.7	22.9	23.9	22.5	22.6
Plant:						
All	1,106	1,013	988	1,331	1,002	1,088
Small	574	472	429	480	358	463
% Small	51.9	46.6	43.4	36.1	35.7	42.7
Design:						
All	30,270	28,577	25,575	28,217	26,693	27,866
Small	14,699	15,133	14,591	14,373	14,620	14,683
% Small	48.6	53.0	57.1	50.9	54.8	52.9
Total:						
All	536,604	510,060	486,499	496,886	468,330	499,676
Small	142,416	138,169	128,501	132,002	128,169	133,851
% Small	26.5	27.1	26.4	26.6	27.4	26.8

* The patent application filing data in this table includes RCEs.
** FY 2011 application data are preliminary and will be finalized in the FY 2012 Performance and Accountability Report (PAR).

Because the percentage of small entity filings varies widely between application types, the Office has averaged the small entity filing rates over the past five years for those application types in order to estimate future filing rates by small and micro entities. Those average rates appear in the last column of Table 53. The Office estimates that small entity filing rates will continue for the next five years at these average historic rates.

The Office forecasts the number of projected patent applications (i.e., workload) for the next five years using a combination of historical data, economic analysis, and subject matter expertise. The Office estimates that utility, plant, and reissue (UPR) patent application filings would grow by 6.0 percent each year in FY 2013 and FY 2014, by 5.5 percent each year in FY 2015 and FY 2016, and by 5.0 percent in FY 2017. The Office forecasts design patent applications independently of UPR applications because they exhibit different behavior. The Office also previously estimated that design patent application filings would grow by 2.0 percent each year in FY 2013 and FY 2017. These filing estimates, however, are established prior to an analysis of elasticity based on fee adjustments. The Budget (page 36, ''USPTO Fee Collection Estimates/Ranges'') further describes the Office's workload forecasting methodology, which involves reviewing economic factors and other relevant indicators about the intellectual property environment. Exhibit 12 of the Budget presents additional performance goals and measurement data, including the forecasted patent application filing growth rate as described above.

Using the estimated filings for the next five years, the average historic rates of small entity filings, and the Office's elasticity estimates, Table 53 presents the Office's estimates of the number of patent application filings by all applicants, including small entities, over the next five fiscal years by application type. As stated in *Part V.* of this NPRM, and taking into account elasticity, the Office estimates that applicants will file 1.3 percent fewer patent applications during FY 2013 than the number estimated to be filed in the absence of a fee increase (with new fee schedule implementation for half the fiscal year). The Office further estimates that 2.7 percent fewer patent

applications will be filed during FY 2014 and 4.0 percent fewer patent applications beginning in FY 2015, in response to the proposed fee adjustment. Beginning in FY 2016, the growth in patent applications filed will return the same levels anticipated in the absence of a fee increase. The Office's estimate of the number of patent application filings by small entities represents an upper bound. Some entities may file more than one application in a given year.

The Office has undertaken an elasticity analysis to examine how fee adjustments may impact small entities, and in particular, whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive patent applicants and patentees are to fee amounts or changes. If elasticity is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The Office analyzes elasticity at the overall filing level across all patent applicants regardless of entity size. Additional information about elasticity estimates is available at http://www.uspto.gov/aia_implementation/fees.jsp#heading-1 in the document entitled ''*USPTO Section 10 Fee Setting—Description of Elasticity Estimates.''* Table 53 reflects estimates for total numbers of applicants, including the portion of small entity applicants; these estimates include reductions in the application growth rate (as described in the previous paragraph) based on the estimated elasticity effect included in Table 2 of the aforementioned *Description of Elasticity Estimates* document. This estimated elasticity effect is multiplied by the estimated number of patent applications in the absence of a fee increase to obtain the estimates in Table 54. *See* the appendix on elasticity for additional detail on the Office's elasticity estimates and methodology.

TABLE 54—ESTIMATED NUMBERS OF PATENT APPLICATIONS IN FY 2013—FY 2017

	FY 2012 (current)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Utility:						
All	531,551	554,650	578,603	600,571	633,667	665,406
Small	134,571	141,669	147,881	153,490	161,951	170,063
Reissue:						
All	690	685	678	672	692	713
Small	152	151	149	148	152	157
Plant						
All	1,044	1,034	1,024	1,014	1,024	1,036
Small	522	517	512	507	512	518
Design:						
All	32,062	31,994	31,910	31,810	32,446	33,094
Small	16,031	15,997	15,955	15,905	16,223	16,547
Total						
All	565,347	588,363	612,215	634,067	667,829	700,249
Small	151,276	158,334	164,497	170,051	178,837	187,285

4. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and Type of Professional Skills Necessary for Preparation of the Report or Record

If implemented, this rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small entities will continue to apply to small entities. The process to assess whether an entity can claim micro entity status requires the same skill currently required to assess whether an entity can claim small entity status. The projected reporting and recordkeeping requirements for an entity to certify eligibility for micro entity fee reductions are minimal (namely, a brief certification). These minimal requirements will not require any professional skills beyond those required to file and prosecute an application. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under this proposal. This action proposes only to adjust patent fees and not to set procedures for asserting small or micro entity status, as previously discussed.

The full proposed fee schedule (*see Part VI. Discussion of Specific Rules*) is set forth in this NPRM. The proposed fee schedule sets or adjusts 352 patent fees. This fee schedule includes 9 new fees for which there are no small or micro entity fee reductions, 94 fees for which there are small entity fee reductions, and 93 fees for which there are micro entity fee reductions. One fee, Statutory Disclaimer (37 CFR 1.20(d)), was formerly eligible for a small entity fee reduction, but is no longer eligible for such reduction under section 10(b) of the Act. Similarly, Basic Filing Fee—Utility (37 CFR 1.16(a)(1), electronic filing for small entities), is set expressly for small entities in section 10(h) of the Act, and there is no corresponding large or micro entity fee.

Commensurate with changes to large entity fees, small entities will pay more than they do currently for 48 percent of the fees currently eligible for the 50 percent fee reduction. However, more fees are reduced for small entities under the Act. As a result, they will pay less than they do currently for 43 percent of the fees eligible for the 50 percent reduction (5 percent of the fees stay the same and the balance are newly proposed fees). Additionally, micro entities are eligible for fee reductions of 75 percent. Compared to what they would have paid as small entities under the current fee schedule, micro entities will pay less for 88 percent of the fees eligible for reduction.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules

The USPTO is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to

examining and granting patents. It is solely responsible for issuing rules to comply with section 10 of the AIA. No other Federal, state, or local entity has jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the PCT). Nevertheless, the USPTO believes that there are no other duplicative or overlapping rules.

6. Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rules on Small Entities

The USPTO considered several alternative approaches to the proposal, discussed below, including retaining current fees, full cost recovery of fees, an across-the-board adjustment to fees, and the proposal submitted to the Patent Public Advisory Committee (PPAC) on February 7, 2012. The discussion begins with a description of the proposal in this rulemaking.

i. Alternative 1: Proposed Alternative—Set and Adjust Section 10 Fees

The USPTO chose the alternative proposed herein because it will enable the Office to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative proposed here achieves the aggregate revenue needed for the Office to offset aggregate costs, and is therefore beneficial to all entities that seek patent protection. Also, the alternative proposed here offers small entities a 50 percent fee reduction and micro entities a 75 percent fee reduction. As discussed in Item 4 above, the proposed fee schedule includes a total of 94 reduced fees for small entities and 93 reduced fees for micro entities. Compared to the current patent fee schedule, small entities will see 34 small entity fees decrease and micro entities will see 74 fees decrease (when compared to the rate they would have paid as a small entity under the current fee schedule).

Given the three-month operating reserve target estimated to be achieved in FY 2017 under this proposed alternative, small and micro entities would pay some higher fees than under some of the other alternatives considered. However, the fees are not as high as those initially proposed to PPAC (Alternative 4), which achieved the three-month target operating reserve in FY 2015. Instead, in this alternative, the Office decided to slow the growth of the operating reserve and lower key fee amounts in response to comments and feedback the PPAC received from IP stakeholders and other interested members of the public during and following the PPAC fee setting hearings.

The proposed alternative secures the Office's required revenue to meet its aggregate costs, while meeting the strategic goals of patent pendency and patent application backlog reduction that will benefit all applicants, and especially small and micro entities. Pendency is one of the most important factors in an analysis of patent fee proposal alternatives. Reducing patent pendency increases the private value of patents because patents are granted sooner, thus allowing patent holders to more quickly commercialize their innovations. Reducing pendency may also allow for earlier disclosure of information and scope of protection, which reduces uncertainty regarding the scope of patent rights and validity of claims for patentees, competitors, and new entrants. All patent applicants should benefit from the reduced pendency that will be realized under the proposed alternative. While some of the other alternatives discussed make progress toward the pendency (and related backlog reduction) goal, the proposed alternative is the only one that does so in a way that does not pose undue costs on patent applicants and holders while still achieving the Office's other strategic goals.

The proposed alternative is also uniquely responsive to stakeholder feedback in ways the other alternatives are not, including multipart and staged fees for requests for continued examination, appeals, and several of the new trial proceedings, including *inter partes* review and post grant review. These inclusions in the proposed alternative aim to *foster innovation* and *increase patent prosecution options for applicants* and patent holders, as discussed in the *Part V: Individual Fee Rationale* section of Supplementary Information in this NPRM. Two examples illustrate how the proposed fee structure is responsive to stakeholder feedback. First, the Office proposes two fees for RCEs. The fee for an initial RCE is set below cost; the second and any subsequent RCEs are set above the amount of the first RCE, but also estimated to be at cost recovery. This structure recognizes stakeholder feedback and Office data about how commonplace RCEs have become as a path to patent protection. A lower first RCE fee continues to allow for use of this option, when necessary; only the more intensive use of this process, which impacts compact prosecution, requires higher fees. Second, the Office proposes to stage the payment of the appeal fees to recover additional cost at later points in time and thereby minimize the cost impacts on applicants associated with withdrawn final rejections. The Office proposes (1) a $1,000 notice of appeal fee, (2) a $0 fee when filing the brief, and (3) a $2,000 fee when forwarding the appeal file—containing the appellant's Brief and the Examiner's Answer—to the BPAI for review. This structure aims to: provide *patent prosecution options for applicants* and appellants, stabilize the fee structure by recovering cost at the points in time where appeals cost is the most significant, and seek ways to minimize the cost impact on applicants associated with withdrawn rejections.

When estimating aggregate revenue, the Office used a 1.9 percent CPI increase (which was the figure included in the Budget) to estimate the amount of aggregate revenue from October 1, 2012 to an estimated date (primarily March 1, 2013, except for issue, pre-grant publication, and assignment fee changes on January 1, 2014) the proposed fees in this rule could be made final. The Office also included the fees in the January and February 2012 Proposed Rules (as adjusted by the final rules) in the aggregate revenue calculation. The proposed fee schedule for this rulemaking, as compared to existing fees (labeled Alternative 1—Proposed Alternative—Set and Adjust Section 10 Fees) is available at http://www.uspto.gov/aia_implementation/fees.jsp#heading-1, in the document entitled ''*USPTO Section 10 Fee Setting—IRFA Tables''.* Fee changes for small and micro entities are included in the tables. For the purpose of calculating the dollar and percent fee change, fees for micro entities are compared to current fees for small entities. For the comparison between proposed fees and current fees, as noted above, the ''current fees'' column displays the fees that went into effect on September 16, 2011, and include the fees proposed in the January and February 2012 Proposed Rules (as adjusted by the final rules), but unlike the aggregate revenue estimates, do not include an estimated CPI fee amount.

ii. Other Alternatives Considered

In addition to the proposed fee schedule set forth in Alternative 1, above, the Office considered several other alternative approaches.

a. Alternative 2: Fee Cost Recovery

The USPTO considered setting most individual large entity fees at the cost of performing the activities related to the particular service, while implementing the small and micro entity fee reductions for eligible fees. Fees that are not typically set using cost data as an indicator have been set at current rates. Under this alternative, maintenance fees are set at a level sufficient to ensure the Office is able to recover the cost of mandatory expenses and offset the revenue loss from small and micro entity discounts (approximately half of the current maintenance fee rates). Additional information about the methodology for determining the cost of performing the activities, including the cost components related to respective fees, is available for review at http://www.uspto.gov/aia_implementation/fees.jsp#heading-1 in the document titled ''*USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology.''* When estimating aggregate revenue, the Office used a 1.9 percent CPI increase (which was the figure included in the Budget) to estimate the amount of aggregate revenue from October 1, 2012 to an estimated date (March 1, 2013) the proposed fees in this rule could be made final. The Office also included the fees in the January and February 2012 Proposed Rules (as adjusted by the final rules) in the aggregate revenue calculation.

It is common practice in the Federal Government to set a particular fee at a level to recover the cost of that service. In OMB Circular A–25: *User Charges,* the OMB states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the Government is acting in its capacity as sovereign. However, the Office projects a significant revenue shortfall under this alternative, defeating the goals of this rulemaking.

First, this alternative would not provide sufficient funds to offset the required fee reductions for small and micro entities. Even after adjusting maintenance fees upward, aggregate revenue would suffer considerably. In response, it would be necessary for the Office to reduce operating costs (i.e., examination capacity (hiring), IT system upgrades, and various other initiatives), the loss of which would negatively impact meeting the financial, strategic, and policy goals of this rulemaking.

Moreover, this alternative presents significant barriers to seeking patent protection, because front-end fees would increase significantly for all applicants, even with small and micro entity fee reductions. The high costs of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative activities among all entities, and especially for small and micro entities. Likewise, there would be no improvements in fee design, such as the multipart RCE fees or staging the appeal fees included in Alternative 1.

In sum, this alternative is inadequate to accomplish any of the goals and strategies as stated in *Part III* of this rulemaking and so the Office has not adopted it.

The fee schedule for Alternative 2: Fee Cost Recovery is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1,* in the document entitled *''USPTO Section 10 Fee Setting—IRFA Tables.''* Fee changes for small and micro entities are included in the tables. For the purpose of calculation the dollar and percent fee change, fees for micro entities are compared to current fees for small entities. For the comparison between proposed fees and current fees, the ''current fees'' column displays the fees that went into effect on September 16, 2011, and include the fees proposed in the January and February 2012 Proposed Rules (as adjusted by the final rules), but does not include an estimated CPI fee amount.

b. Alternative 3: Across-the-Board Adjustment

In some past years, and as estimated to begin on October 1, 2012 (*see* 77 FR 8831 (May 14, 2012)), the USPTO used its authority to adjust statutory fees annually according to changes in the consumer price index (CPI), which is a commonly used measure of inflation. Building on this prior approach, Alternative 3 would set fees by applying a 6.7 percent, multi-year, across-the-board inflationary increase to the baseline (status quo) beginning in FY 2013. The increase would be in addition to the CPI increase described in the aforementioned proposed rule. The 6.7 percent represents the estimated cumulative inflationary adjustment from FY 2013 through FY 2016. The Office selected this time period to represent the fiscal year in which the fees would be effective through the fiscal year in which the operating reserve will be approaching the target level. As estimated by the Congressional Budget Office, projected inflationary rates by fiscal year are: 1.4 percent in FY 2013, 1.5 percent in FY 2014, 1.6 percent in FY 2015, and 2.0 percent in FY 2016. Each percentage rate for a given year applies to the following year, e.g., a 1.4 percent increase for FY 2013 is applied to FY 2014. These rates are multiplied together to account for the compounding effect occurring from year-to-year; the rounded result is 6.7 percent. When estimating aggregate revenue, the Office used a 1.9 percent CPI increase (which was the figure included in the Budget) to estimate the amount of aggregate revenue from October 1, 2012 to an estimated date (March 1, 2013) the proposed fees in this rule could be made final. The Office also included the fees in the January and February 2012 Proposed Rules (as adjusted by the final rules) in the aggregate revenue calculation.

Under this alternative, the Office would not collect enough revenue to achieve strategic goals identified in *Part III* and within the timeframes identified in the Budget. This alternative would implement the small and micro entity fee reductions for eligible fees, but would also retain the same fee relationships and subsidization policies as the status quo (baseline) alternative. There would be no improvements in fee design, such as the multipart RCE fees or staging the appeal fees included in Alternative 1. Further, when looking at the aggregate revenue generated from this alternative, the Office projects that patent pendency would not change compared to the status quo. This means that while patent pendency and application backlog will first start to decrease due to the hiring initiative in FY 2012 (1,500 examiners), it would thereafter increase because adequate funding would not be available to continue hiring to increase examination capacity to work off the patent application backlog, keep pace with new incoming applications, and build an adequate operating reserve.

The fee schedule for Alternative 3: Across-the-Board Adjustment is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1,* in the document entitled *''USPTO Section 10 Fee Setting—IRFA Tables.''* Fee changes for small and micro entities are included in the tables. For the purpose of calculating the dollar and percent fee change, fees for micro entities are compared to current fees for small entities. For the comparison between proposed fees and current fees, the ''current fees'' column displays the fees that went into effect on September 16, 2011, and include the fees proposed

in the January and February 2012 Proposed Rules (as adjusted by the final rule), but does not include an estimated CPI fee amount.

c. Alternative 4: Initial Proposal to the PPAC

The fee structure initially delivered to the PPAC on February 7, 2012, and published during the public hearings in February 2012, which is consistent with the Budget, would achieve the USPTO's strategic goals and objectives, including reducing backlog and pendency.

This alternative is nearly the same as the proposed Alternative 1. As described in *Part V.* of this NPRM, some fees would be set to achieve cost recovery for specific patent-related services, while many others would be set either below or above cost. For example, like alternatives 1 and 3, under this alternative the Office would subsidize front-end fees set below cost (e.g., file, search, and examination) by setting back-end fees (e.g., issue and maintenance) above cost to enable a low cost of entry into the patent system. In some cases, fee rates would be set at a level during patent prosecution so that an applicant pays certain fees at a point in time relative to the amount of information available to make a decision about proceeding. Specifically, fees would be set low during prosecution when there is less certainty about the value of an applicant's invention, then begin to rise gradually starting at issue and continuing through maintenance fees at different stages of the patent lifecycle (e.g., 3.5, 7.5, and 11.5 years) when a patent holder has greater certainty in the value of the invention. This structure also considers the relationship among individual fees and the cost of operational processes, including some targeted adjustments to fees where the gap between cost and current fees is greatest.

The fee schedule for this alternative would achieve higher revenue than each of the other alternatives considered. It would permit the Office to fund the operating reserve at a rapid pace, reaching its three-month target level in FY 2015. When estimating aggregate revenue, the Office used a 1.9 percent CPI increase (which was the figure included in the Budget) to estimate the amount of aggregate revenue from October 1, 2012, to an estimated date (primarily March 1, 2013, except for issue and pre-grant publication fee changes on January 1, 2014) the proposed fees in this rule could be made final. The Office also included the fees in the January and February 2012 Proposed Rules in the aggregate revenue calculation.

However, during the PPAC hearings and comment period, stakeholders raised concerns about the rate of growth associated with the operating reserve. While most of the Office's stakeholders agree with the need for an operating reserve, many raised concerns about the need to reach the target so quickly. Stakeholders opined that such a rate of growth would impose too great of a burden on the patent user community. Many were also concerned that the fee rates associated with achieving the operating reserve target so quickly would be too high. Although this alternative would meet the Office's revenue goals, the Office ultimately rejected this alternative because it would have a greater economic impact on all entities (including small and micro entities) than the alternative proposed in this NPRM. A modified version of this alternative (with a number of lower fees) became the proposed alternative in this rulemaking.

The fee schedule for Alternative 4: Initial Proposal to PPAC is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1,* in the document entitled ''*USPTO Section 10 Fee Setting—IRFA Tables.*'' Fee changes for small and micro entities are included in the tables. For the purpose of calculation the dollar and percent fee change, fees for micro entities are compared to current fees for small entities. For the comparison between proposed fees and current fees, the ''current fees'' column displays the fees that went into effect on September 16, 2011, and include the fees proposed in the January and February 2012 Proposed Rules, but does not include an estimated CPI fee amount.

d. Alternative 5: Retain Current Fees (Status Quo)

The Office considered a no-action alternative. This alternative would retain the status quo, meaning that the Office would not expand the range of fees eligible for a small entity discount (50 percent), nor would it go a step further and provide micro entities with the 75 percent fee reduction that Congress provided in section 10 of the Act. This approach would not provide sufficient aggregate revenue to accomplish the Office's goals as set forth in *Part III* of this NPRM or the Strategic Plan, including hiring the examiners needed to decrease the backlog of patent applications, meeting patent pendency goals, improving patent quality, advancing IT initiatives, and achieving sustainable funding. When estimating aggregate revenue, the Office included the fees proposed in the January and February 2012 Proposed Rules (as adjusted by the final rules) in the aggregate revenue calculation.

The status quo alternative would be detrimental to micro entities, because the proposed rule includes a 75 percent fee reduction for micro entities that will result in those applicants paying less under the proposed fee structure than they would under the status quo. Moreover, small entities generally would be harmed because fewer small entity discounts would be available.

The status quo approach would result in inadequate funding for effective patent operations. It would result in increased patent pendency levels and patent application backlog. It would also prevent the USPTO from meeting the goals in its strategic plan that are designed to achieve greater efficiency and improve patent quality. These results would negatively impact small entities just as they would negatively impact all other patent applicants. While the Office would continue to operate and make some progress toward its goals, the progress would be much slower, and in some cases, initial improvements would be eradicated in the out-years (e.g., patent pendency and the backlog would increase in the out-years as the Office fails to increase examination capacity to keep up with incoming applications). Likewise, IT improvement activities would continue, but at a slower rate due to funding limitations.

iii. Alternatives Specified by the RFA

The RFA provides that an agency also consider four specified ''alternatives'' or approaches, namely: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of the rule, or any part thereof. 5 U.S.C. 604(c). The USPTO discusses each of these specified alternatives or approaches below, and describes how this notice of proposed rulemaking is adopting these approaches.

Differing Requirements

As discussed above, the changes proposed in this rulemaking would establish differing requirements for small and micro entities that take into account the reduced resources available to them. Specifically, micro entities would pay a 75 percent reduction in patent fees under this proposal.

For non-micro small entities, this proposal would not only retain the

existing 50 percent patent fee reduction but also expand the availability of such small entity fee reductions to 26 patent fees that currently are not eligible for small entity reductions. The increased availability of fee reductions for both small and micro entities arises from the fact that section 10(b) of the Act provides that reductions apply to all fees for ''filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.'' Prior to the AIA, small entity fee reductions applied only to fees set under 35 U.S.C. 41(a) and 41(b). By increasing the scope of fees eligible for reductions, the AIA allows the USPTO to do more to ease burdens and reduce the entry barriers for small and micro entities to take part in the patent system.

This rulemaking sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. To pay reduced patent fees, small entities must merely assert small entity status to pay reduced patent fees. The small entity may make this assertion by either checking a box on the transmittal form, ''Applicant claims small entity status,'' or by paying the small entity fee exactly. The Office is similarly proposing that a micro entity submit a form certifying micro entity status. (Changes to Implement Micro Entity Status for Paying Patent Fees, 77 FR 31806 (May 30, 2012)). These proposed rules do not change any reporting requirements for any small entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification), and the benefit of the fee reductions (50 percent for small entities and 75 percent for micro entities) is significant.

This proposed rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

Clarification, Consolidation, or Simplification of Requirements

The proposed changes here also clarify, consolidate, and simplify the current requirements. These changes incorporate certain options to stage fees (break fees into multiple parts), so that applicants can space out the payment of fees and make decisions about some fees at late stages in the application process when they have more information. Applicants also can receive partial refunds when some parts of a service prove not to be needed.

For example, the Office proposes that appeal fees be spread out across different stages of the appeal process so that an applicant can pay a smaller fee to initiate the appeal, and then not pay for the bulk of the appeal fee until if and when the appeal is forwarded to the BPAI after the Examiner's Answer is filed. Thus, if a small or micro entity initiates an appeal, but the appeal does not go forward because the examiner withdraws the rejection, the small entity will pay less for the appeal process than under the current fee structure (where the bulk of the appeal fees would be paid up front even if the appeal does not go forward). In another example, the Office proposes to set fees for the administrative trials (*inter partes* review, post grant review, and covered business method review) before the BPAI to be paid in multiple parts. With *inter partes* review, for instance, the Office proposes to return fees for post-institution services should a petition not be instituted. Similarly, the Office proposes that fees paid for post-institution review of a large number of claims be returned if the Office only institutes the review of a subset of the requested claims. These options for staging and splitting fees into multiple parts will benefit small and micro entities, who will be able to spread out their payments of fees and in some instances, potentially receive refunds of fees where only a portion of a particular service is ultimately provided. *See* proposed 41.20 and 42.15.

This proposed rule makes the best use of this alternative approach. No other alternative considered above includes the full range of redesign features.

Performance Standards

Performance standards do not apply to the current rulemaking.

Exemption for Small Entities

The proposed changes here include a new 75 percent reduction in fees for micro entities, and an expansion of the 50 percent reduction in fees for small entities. The Office considered exempting small and micro entities from paying patent fees, but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the Act provides that ''fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents *shall* be reduced by 50 percent [for small entities] and *shall* be reduced by 75 percent [for micro entities].'' (Emphasis added). Neither the AIA nor any other statute authorizes the USPTO simply to exempt small or micro entities, as a class of applicants, from paying patent fees.

B. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be economically significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007). The Office has developed a RIA as required for rulemakings deemed to be economically significant. The complete RIA is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1.*

C. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

D. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

E. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office.

F. Unfunded Mandates Reform Act of 1995

The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3549) requires that the USPTO considers the impact of paperwork and other information collection burdens imposed on the public. This proposed rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the PRA. The collection of information involved in this notice has been submitted to OMB as a new information collection under OMB control number 0651–00xx. The proposed collection will be available at the OMB's Information Collection Review Web site at: *www.reginfo.gov/public/do/PRAMain.*

1. Summary

This notice of proposed rulemaking proposes both collecting two fees not specifically delineated in an existing information collection request (listed in Table (A) below) and amending the fees in several current information collections previously approved by OMB (listed in Table (B) below). The USPTO is consolidating these fee burdens in order to allow for fee burden adjustments to be requested through a single fee information collection package entitled ''America Invents Act Section 10 Patent Fee Adjustments.'' This new, consolidated collection will result in the unavoidable double counting of certain fees for a short period of time. The USPTO will update the fee burden inventory in existing information collections to correct the double counting by submitting non-substantive change requests in each of the currently existing information collection requests (in Table (B) below) with the appropriate fee adjustments. Nothing associated with either this rulemaking or this information collection request alters the existing non-fee burden of any response to any information collection. However, because a change in some fees will change the aggregate demand for certain services, the total number of responses for some information collections will change, which in turn will change the total number of burden hours (defined as the total hour burden of a collection multiplied by the total responses) and respondent cost burden (burden hours multiplied by the attorney cost per hour) for some collections. These changes are detailed in the supporting statement for this information collection, and the USPTO will update the existing information collections to account for this change when submitting the non-substantive change requests described above.

(A) *Fees Included in this New Information Collection Request*

Fee	Amount (Large Entity)	Amount (Small Entity)	Amount (Micro Entity)	Regulation
Correct Inventorship after First Action on the Merits.	$1,000.00	$500.00	$250.00	37 CFR 1.17(d)
Petitions to Chief APJ Under 37 CFR 41.3	$400	$400	$400	37 CFR 41.3

(B) Existing & Pending Collections Amended under the Proposed Rulemaking

(1) 0651–0012 Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the USPTO
(2) 0651–0016 Rules for Patent Maintenance Fees
(3) 0651–0020 Patent Term Extension
(4) 0651–0021 Patent Cooperation Treaty
(5) 0651–0027 Recording Assignments
(6) 0651–0031 Patent Processing (Updating)
(7) 0651–0032 Initial Patent Applications
(8) 0651–0033 Post Allowance and Refiling
(9) 0651–0036 Statutory Invention Registration
(10) 0651–0059 Certain Patent Petitions Requiring a Fee (formerly Patent Petitions Charging the Fee Under 37 CFR 1.17(f))
(11) 0651–0063 Board of Patent Appeals and Interferences (BPAI) Actions
(12) 0651–0064 Patent Reexaminations
(13) 0651–00xx Patent Review and Derivation Proceedings
(14) 0651–00xx Matters Related to Patent Appeals

2. Data

Section 10 of the Act authorizes the Director of the USPTO to set or adjust all patent fees established, authorized, or charged under Title 35 of the U.S. Code. Agency fees associated with information collections are considered to be part of the burden of the collection of information. The data associated with this information collection request is summarized below and provided in additional detail in the supporting statement for this information collection request, available through the Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Section 10 also provides for the creation of a ''micro entity status.'' The information collection associated with micro entity status will be addressed in a separate proposed rulemaking and a separate PRA analysis.

Needs and Uses: The Agency is authorized to collect these fees by Section 10 of the Act. The public uses this information collection to pay their required fees and communicate with the Office regarding their applications and patents procedures. The Agency uses these fees to process respondents' applications and patents, to process applicants' requests for various procedures in application and post-grant patent processing, and to provide all associated services of the Office.

OMB Number: 0651–00xx.

Title: America Invents Act Section 10 Patent Fee Adjustments.

Form Numbers: None.

Type of Review: New Collection.

Likely Respondents/Affected Public: Individuals or households, businesses or other for-profit institutions, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

A. Estimates For All Fees, Including Both Information Added In This Collection And Information In Existing And Pending Collections

Estimated Number of Respondents For All Fees: 5,832,472 responses per year.

Estimated Time per Response For All Fees: Except as noted below for the two fees added to this collection, this

information collection will not result in any change in any time per response.

Estimated Total Annual (Hour) Respondent Cost Burden for All Fees: Except as noted below for the two fees added to this collection, this information collection will not result in any change in any information requirements associated with fees set or amended by this proposed rulemaking. Other than the two fees added to this collection, the only change in the total annual (hour) respondent cost burden results from the change in responses, which is a result of two factors. First, because the change in a fee for a particular service may cause a change in demand for that service, the total number of respondents for each service might change, altering the total annual (hour) respondent cost burden for fees covered under approved collections. This change has been fully detailed in the supporting statement and its appendices. Second, response numbers of current inventories have been updated to reflect the Office's most recent estimates.

Estimated Total Annual (Non-Hour) Respondent Cost Burden for All Fees: $2,594,521,312. The USPTO estimates that the total fees associated with this collection, representing all fees collected across the full panoply of patent processing services provided by the Office, will be approximately $2,594,521,210 per year. (This number is different than the total revenue cited elsewhere in this rule because PRA estimates have been calculated by taking an average over three years of estimated responses and because not every fee adjusted in this rulemaking constitutes a burden under the PRA (e.g., self-service copying fees).) The amount of these fees is a $358,711,017 change from the fee amounts currently in the USPTO PRA inventory. Of this, $349,621,825 directly results from this proposed rulemaking and $9,089,192 results from non-rulemaking factors. Additionally, the USPTO estimates that $102 of additional postage cost associated with the items added in this collection will result from this collection. Because the postage costs for items in existing collections have not been altered by this rulemaking, they are not part of the burden of this rulemaking.

B. Estimates for Fees not Specifically Delineated in an Existing Information Collection Request (A Subset of All Fees in Part A. Above)

Estimated Number of Respondents for Information Added In This Collection: 665 responses per year.

Estimated Time Per Response For Information Added In This Collection: The USPTO estimates that it will take the public between 2 and 4 hours to gather the necessary information, prepare the appropriate form or other documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours For Information Added In This Collection: 1,660 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden For Information Added In This Collection: $615,860 per year.

Estimated Annual (Non-Hour) Respondent Cost Burden For Information Added In This Collection: $493,852 per year. Of this amount, $427,750 directly results from this rulemaking, $66,000 results from non-rulemaking factors, and $102 results from postage.

3. Solicitation

The agency is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are requested to send comments regarding this information collection by November 5, 2012 to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, the Desk Officer for the United States Patent and Trademark Office, and via email at *nfraser@omb.eop.gov*; and (2) Michelle Picard via email to *fee.setting@uspto.gov*, or by mail addressed to: Mail Stop—Office of the Chief Financial Officer, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Michelle Picard.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small Businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

37 CFR Part 42

Trial practice before the Patent Trial and Appeal Board.

For the reasons set forth in the preamble, 37 CFR parts 1, 41, and 42 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.16 is amended by revising paragraphs (a) through (s) to read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29(a))	$70.00
By a small entity (§ 1.27(a))	$140.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))	$70.00
By other than a small or micro entity	$280.00

(b) Basic fee for filing each application for an original design patent:

By a micro entity (§ 1.29(a))	$45.00
By a small entity (§ 1.27(a))	$90.00
By other than a small or micro entity	$180.00

(c) Basic fee for filing each application for an original plant patent:

By a micro entity (§ 1.29(a))	$45.00
By a small entity (§ 1.27(a))	$90.00
By other than a small or micro entity	$180.00

(d) Basic fee for filing each provisional application:

By a micro entity (§ 1.29(a))	$65.00
By a small entity (§ 1.27(a))	$130.00
By other than a small or micro entity	$260.00

(e) Basic fee for filing each application for the reissue of a patent:

By a micro entity (§ 1.29(a)) $70.00
By a small entity (§ 1.27(a)) $140.00
By other than a small or micro entity $280.00

(f) Surcharge for filing any of the basic filing fee, the search fee, the examination fee, or the oath or declaration on a date later than the filing date of the application, except provisional applications:

By a micro entity (§ 1.29(a)) $35.00
By a small entity (§ 1.27(a)) $70.00
By other than a small or micro entity $140.00

(g) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(c)(1)) on a date later than the filing date of the provisional application:

By a micro entity (§ 1.29(a)) $15.00
By a small entity (§ 1.27(a)) $30.00
By other than a small or micro entity $60.00

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

By a micro entity (§ 1.29(a)) $105.00
By a small entity (§ 1.27(a)) $210.00
By other than a small or micro entity $420.00

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29(a)) $20.00
By a small entity (§ 1.27(a)) $40.00
By other than a small or micro entity $80.00

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

By a micro entity (§ 1.29(a)) $195.00
By a small entity (§ 1.27(a)) $390.00
By other than a small or micro entity $780.00

(k) Search fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29(a)) $150.00
By a small entity (§ 1.27(a)) $300.00
By other than a small or micro entity $600.00

(l) Search fee for each application for an original design patent:

By a micro entity (§ 1.29(a)) $30.00
By a small entity (§ 1.27(a)) $60.00
By other than a small or micro entity $120.00

(m) Search fee for each application for an original plant patent:

By a micro entity (§ 1.29(a)) $95.00
By a small entity (§ 1.27(a)) $190.00
By other than a small or micro entity $380.00

(n) Search fee for each application for the reissue of a patent:

By a micro entity (§ 1.29(a)) $150.00
By a small entity (§ 1.27(a)) $300.00
By other than a small or micro entity $600.00

(o) Examination fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29(a)) $180.00
By a small entity (§ 1.27(a)) $360.00
By other than a small or micro entity $720.00

(p) Examination fee for each application for an original design patent:

By a micro entity (§ 1.29(a)) $115.00
By a small entity (§ 1.27(a)) $230.00
By other than a small or micro entity $460.00

(q) Examination fee for each application for an original plant patent:

By a micro entity (§ 1.29(a)) $145.00
By a small entity (§ 1.27(a)) $290.00
By other than a small or micro entity $580.00

(r) Examination fee for each application for the reissue of a patent:

By a micro entity (§ 1.29(a)) $540.00
By a small entity (§ 1.27(a)) $1,080.00
By other than a small or micro entity $2,160.00

(s) Application size fee for any application filed under 35 U.S.C. 111 for the specification and drawings which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a micro entity (§ 1.29(a)) $100.00
By a small entity (§ 1.27(a)) $200.00
By other than a small or micro entity $400.00

* * * * *

3. Section 1.17 is amended by revising paragraphs (a) through (i), removing and reserving paragraph (j), and revising paragraphs (k) through (m) and (p) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

By a micro entity (§ 1.29(a)) $50.00
By a small entity (§ 1.27(a)) $100.00
By other than a small or micro entity $200.00

(2) For reply within second month:

By a micro entity (§ 1.29(a)) $150.00
By a small entity (§ 1.27(a)) $300.00
By other than a small or micro entity $600.00

(3) For reply within third month:

By a micro entity (§ 1.29(a)) $350.00
By a small entity (§ 1.27(a)) $700.00
By other than a small or micro entity $1,400.00

(4) For reply within fourth month:

By a micro entity (§ 1.29(a)) $550.00
By a small entity (§ 1.27(a)) $1,100.00
By other than a small or micro entity $2,200.00

(5) For reply within fifth month:

By a micro entity (§ 1.29(a)) $750.00
By a small entity (§ 1.27(a)) $1,500.00
By other than a small or micro entity $3,000.00

(b) For fees in proceedings before the Board of Patent Appeals and Interferences, *see* § 41.20 of this title.

(c) For filing a request for prioritized examination under § 1.102(e):

By a micro entity (§ 1.29(a)) $1,000.00
By a small entity (§ 1.27(a)) $2,000.00
By other than a small or micro entity $4,000.00

(d) For correction of inventorship in an application after the first Office action on the merits:

By a micro entity (§ 1.29(a)) $250.00
By a small entity (§ 1.27(a)) $500.00
By other than a small or micro entity $1,000.00

(e) To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

By a micro entity $300.00
By a small entity (§ 1.27(a)) $600.00
By other than a small or micro entity $1,200.00

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

By a micro entity $425.00
By a small entity (§ 1.27(a)) $850.00
By other than a small or micro entity $1,700.00

(f) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29(a)) $100.00
By a small entity (§ 1.27(a)) $200.00

By other than a small or micro entity $400.00

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

(g) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29(a))	$50.00
By a small entity (§ 1.27(a))	$100.00
By other than a small or micro entity	$200.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.59—for expungement of information.

§ 1.103(a)—to suspend action in an application.

§ 1.136(b)—for review of a request for extension of time when the provisions of § 1.136 (a) are not available.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.296—to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inters partes* reexamination proceedings.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

(h) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29(a))	$35.00
By a small entity (§ 1.27(a))	$70.00
By other than a small or micro entity	$140.00

§ 1.19(g)—to request documents in a form other than provided in this part.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.102(d)—to make an application special.

§ 1.138(c)—to expressly abandon an application to avoid publication.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

(i) Processing fee for taking action under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29(a))	$35.00
By a small entity (§ 1.27(a))	$70.00
By other than a small or micro entity	$140.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.71(g)(2)—for processing a belated amendment under § 1.71(g).

§ 1.99(e)—for processing a belated submission under § 1.99.

§ 1.102(e)—for requesting prioritized examination of an application.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

(j) [Reserved]

(k) For filing a request for expedited examination under § 1.155(a):

By a micro entity (§ 1.29(a))	$225.00
By a small entity (§ 1.27(a))	$450.00
By other than a small or micro entity	$900.00

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a micro entity (§ 1.29(a))	$160.00
By a small entity (§ 1.27(a))	$320.00
By other than a small or micro entity	$640.00

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a micro entity (§ 1.29(a))	$475.00
By a small entity (§ 1.27(a))	$950.00
By other than a small or micro entity	$1,900.00

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d) or a submission under § 1.9:

By a micro entity (§ 1.29(a))	$45.00
By a small entity (§ 1.27(a))	$90.00
By other than a small or micro entity	$180.00

(q) Processing fee for taking action under one of the following sections which refers to this paragraph: $50.00

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application § 1.48—for correction of inventorship in a provisional application.

§ 1.53(c)(2)—to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c)

(r) For entry of a submission after final rejection under § 1.129(a):

By a micro entity (§ 1.29(a))	$210.00
By a small entity (§ 1.27(a))	$420.00
By other than a small or micro entity	$840.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a micro entity (§ 1.29(a))	$210.00
By a small entity (§ 1.27(a))	$420.00
By other than a small or micro entity	$840.00

(t) For the acceptance of an unintentionally delayed claim for

priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78) or for filing a request for the restoration of the right of priority under:

By a micro entity (§ 1.29(a))	$355.00
By a small entity (§ 1.27(a))	$710.00
By other than a small or micro entity	$1,420.00

4. Section 1.18 is revised to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a micro entity (§ 1.29(a))	$240.00
By a small entity (§ 1.27(a))	$480.00
By other than a small or micro entity	$960.00

(b) Issue fee for issuing an original design patent:

By a micro entity (§ 1.29(a))	$140.00
By a small entity (§ 1.27(a))	$280.00
By other than a small or micro entity	$560.00

(c) Issue fee for issuing an original plant patent:

By a micro entity (§ 1.29(a))	$190.00
By a small entity (§ 1.27(a))	$380.00
By other than a small or micro entity	$760.00

(d)

Publication fee	$0.00
Republication fee (§ 1.221(a))	$300.00

(e) For filing an application for patent term adjustment under § 1.705: $200.00

(f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for patent term adjustment under § 1.705: $400.00

5. Section 1.19 is revised to read as follows:

§ 1.19 Document Supply Fees.

The United States Patent and Trademark Office will supply copies of the following patent-related documents upon payment of the fees indicated. Paper copies will be in black and white unless the original document is in color, a color copy is requested and the fee for a color copy is paid.

(a) Uncertified copies of patent application publications and patents:

(1) Printed copy of the paper portion of a patent application publication or patent including a design patent, statutory invention registration, or defensive publication document. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (e.g., facsimile, electronic mail): $3.00

(2) Printed copy of a plant patent in color: $15.00

(3) Color copy of a patent (other than a plant patent) or statutory invention registration containing a color drawing: $25.00

(b) Copies of Office documents to be provided in paper, or in electronic form, as determined by the Director (for other patent-related materials *see* § 1.21(k)):

(1) Copy of a patent application as filed, or a patent-related file wrapper and contents, stored in paper in a paper file wrapper, in an image format in an image file wrapper, or if color documents, stored in paper in an Artifact Folder:

(i) If provided on paper:

(A) Application as filed: $20.00

(B) File wrapper and contents of 400 or fewer pages: $200.00

(C) Additional fee for each additional 100 pages or portion thereof of file wrapper and contents: $40.00

(D) Individual application documents, other than application as filed, per document: $25.00

(ii) If provided on compact disc or other physical electronic medium in single order:

(A) Application as filed: $20.00

(B) File wrapper and contents, first physical electronic medium: $55.00

(C) Additional fee for each continuing physical electronic medium in the single order of paragraph (b)(1)(ii)(B) of this section: $15.00

(iii) If provided electronically (e.g., by electronic transmission) other than on a physical electronic medium as specified in paragraph (b)(1)(ii) of this section:

(A) Application as filed: $20.00

(B) File wrapper and contents: $55.00

(iv) If provided to a foreign intellectual property office pursuant to a priority document exchange agreement (*see* § 1.14 (h)(1)): $0.00

(2) Copy of patent-related file wrapper contents that were submitted and are stored on compact disc or other electronic form (e.g., compact discs stored in an Artifact Folder), other than as available in paragraph (b)(1) of this section:

(i) If provided on compact disc or other physical electronic medium in a single order:

(A) First physical electronic medium in a single order: $55.00

(B) Additional fee for each continuing physical electronic medium in the single order of paragraph (b)(2)(i) of this section: $15.00

(ii) If provided electronically other than on a physical electronic medium per order: $55.00

(3) Copy of Office records, except copies available under paragraph (b)(1) or (2) of this section: $25.00

(4) For assignment records, abstract of title and certification, per patent: $25.00

(c) Library service (35 U.S.C. 13): For providing to libraries copies of all patents issued annually, per annum: $50.00

(d) For list of all United States patents and statutory invention registrations in a subclass: $3.00

(e) Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent: $10.00

(f) Uncertified copy of a non-United States patent document, per document: $25.00

(g) Petitions for documents in a form other than that provided by this part, or in a form other than that generally provided by the Director, will be decided in accordance with the merits of each situation. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17 (h) and, if the petition is granted, the documents will be provided at cost.

6. Section 1.20 is revised to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake (§ 1.323): $100.00.

(b) Processing fee for correcting inventorship in a patent (§ 1.324): $130.00.

(c) In reexamination proceedings:

(1) For filing a request for *ex parte* reexamination (§ 1.510(a)):

By a micro entity (§ 1.29(a))	$3,750.00
By a small entity (§ 1.27(a))	$7,500.00
By other than a small or micro entity	$15,000.00

(2) [Reserved]

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:

By a micro entity (§ 1.29(a))	$105.00
By a small entity (§ 1.27(a))	$210.00
By other than a small or micro entity	$420.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29(a)) $20.00
By a small entity (§ 1.27(a)) $40.00
By other than a small or micro entity $80.00

(5) If the excess claims fees required by paragraphs (c)(3) and (4) of this section are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by paragraphs (c)(3) and (4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(6) For filing a petition in a reexamination proceeding, except for those specifically enumerated in §§ 1.550(i) and 1.937(d):

By a micro entity (§ 1.29(a)) $485.00
By a small entity (§ 1.27(a)) $970.00
By other than a small or micro entity $1,940.00

(7) For a refused request for *ex parte* reexamination under § 1.510 (included in the request for *ex parte* reexamination fee):

By a micro entity (§ 1.29(a)) $900.00
By a small entity (§ 1.27(a)) $1,800.00
By other than a small or micro entity $3,600.00

(d) For filing each statutory disclaimer (§ 1.321):

By other than a small or micro entity $160.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

By a micro entity (§ 1.29(a)) $400.00
By a small entity (§ 1.27(a)) $800.00
By other than a small or micro entity $1,600.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

By a micro entity (§ 1.29(a)) $900.00
By a small entity (§ 1.27(a)) $1,800.00
By other than a small or micro entity $3,600.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

By a micro entity (§ 1.29(a)) $1,850.00
By a small entity (§ 1.27(a)) $3,700.00
By other than a small or micro entity $7,400.00

(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980:

By a micro entity (§ 1.29(a)) $40.00
By a small entity (§ 1.27(a)) $80.00
By other than a small or micro entity $160.00

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Director to have been—

(1) Unavoidable:

By a micro entity (§ 1.29(a)) $175.00
By a small entity (§ 1.27(a)) $350.00
By other than a small or micro entity $700.00

(2) Unintentional:

By a micro entity (§ 1.29(a)) $410.00
By a small entity (§ 1.27(a)) $820.00
By other than a small or micro entity $1,640.00

(j) For filing an application for extension of the term of a patent

(1) Application for extension under § 1.740: $1,120.00

(2) Initial application for interim extension under § 1.790: $420.00

(3) Subsequent application for interim extension under § 1.790: $220.00

(k) In supplemental examination proceedings:

(1) For processing and treating a request for supplemental examination:

By a micro entity (§ 1.29(a)) $1,100.00
By a small entity (§ 1.27(a)) $2,200.00
By other than a small or micro entity $4,400.00

(2) For *ex parte* reexamination ordered as a result of a supplemental examination proceeding:

By a micro entity (§ 1.29(a)) $3,400.00
By a small entity (§ 1.27(a)) $6,800.00
By other than a small or micro entity $13,600.00

(3) For processing and treating, in a supplemental examination proceeding, a non-patent document over 20 sheets in length, per document:

(i) Between 21 and 50 sheets:

By a micro entity (§ 1.29(a)) $45.00
By a small entity (§ 1.27(a)) $90.00
By other than a small or micro entity $180.00

(ii) For each additional 50 sheets or a fraction thereof:

By a micro entity (§ 1.29(a)) $70.00
By a small entity (§ 1.27(a)) $140.00
By other than a small or micro entity $280.00

7. Section 1.21 is amended by:

a. Revising paragraph (a);

b. Removing and reserving paragraph (d);

c. Revising paragraph (e);

d. Revising paragraphs (g) through (k);

e. Revising paragraph (n); and

f. Removing paragraph (o).

The revisions read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) Registration of attorneys and agents:

(l) For admission to examination for registration to practice:

(i) Application Fee (non-refundable): $40.00

(ii) Registration examination fee.

(A) For test administration by commercial entity: $200.00

(B) For test administration by the USPTO: $450.00

(2) On registration to practice or grant of limited recognition under § 11.9(b) or (c): $100.00

(3) [Reserved]

(4) For certificate of good standing as an attorney or agent: $10.00

(i) Suitable for framing: $20.00

(ii) [Reserved]

(5) For review of decision:

(i) By the Director of Enrollment and Discipline under § 11.2(c): $130.00

(ii) Of the Director of Enrollment and Discipline under § 11.2(d): $130.00

(6) [Reserved]

(7) Annual practitioner maintenance fee for registered attorney or agent.

(i) Active Status: $120.00

(ii) Voluntary Inactive Status: $25.00

(iii) Fee for requesting restoration to active status from voluntary inactive status: $50.00

(iv) Balance due upon restoration to active status from voluntary inactive status: $100.00

(8) Annual practitioner maintenance fee for individual granted limited recognition: $120.00

(9)(i) Delinquency fee: $50.00

(ii) Administrative reinstatement fee: $100.00

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; on petition for reinstatement by a person

excluded or suspended on ethical grounds, or excluded on consent from practice before the Office: $1,600.00

* * * * *

(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application: $40.00

(g) Self-service copy charge, per page: $0.25

(h) For recording each assignment, agreement, or other paper relating to the property in a patent or application, per property:

(1) If submitted electronically: $0.00

(2) If not submitted electronically: $40.00

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale: Each application or patent: $25.00

(j) Labor charges for services, per hour or fraction thereof: $40.00

(k) For items and services that the Director finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Director with respect to each such item or service: Actual cost

* * * * *

(n) For handling an application in which proceedings are terminated pursuant to § 1.53(e); $130.00

8. Section 1.445 is amended by revising paragraph (a) introductory text and paragraphs (a)(1)(i), (a)(2) through (4), and (b) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by law or by the Director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (*see* 35 U.S.C. 361(d) and PCT Rule 14) consisting of:

(i) A basic portion:

By a micro entity (§ 1.29(a))	$60.00
By a small entity (§ 1.27(a))	$120.00
By other than a small or micro entity	$240.00

* * * * *

(2) A search fee (*see* 35 U.S.C. 361(d) and PCT Rule 16):

By a micro entity (§ 1.29(a))	$520.00
By a small entity (§ 1.27(a))	$1,040.00
By other than a small or micro entity	$2,080.00

(3) A supplemental search fee when required, per additional invention:

By a micro entity (§ 1.29(a))	$520.00
By a small entity (§ 1.27(a))	$1,040.00
By other than a small or micro entity	$2,080.00

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4):

By a micro entity (§ 1.29(a))	$60.00
By a small entity (§ 1.27(a))	$120.00
By other than a small or micro entity	$240.00

(b) The international filing fee shall be as prescribed in PCT Rule 15.

9. Section 1.482 is revised to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Director under the authority of 35 U.S.C. 376:

(1) The following preliminary examination fee is due on filing the Demand:

(i) If an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a micro entity (§ 1.29(a))	$150.00
By a small entity (§ 1.27(a))	$300.00
By other than a small or micro entity	$600.00

(ii) If the International Searching Authority for the international application was an authority other than the United States Patent and Trademark:

By a micro entity (§ 1.29(a))	$190.00
By a small entity (§ 1.27(a))	$380.00
By other than a small or micro entity	$760.00

(2) An additional preliminary examination fee when required, per additional invention:

By a micro entity (§ 1.29(a))	$150.00
By a small entity (§ 1.27(a))	$300.00
By other than a small or micro entity	$600.00

(b) The handling fee is due on filing the Demand and shall be prescribed in PCT Rule 57.

10. Section 1.492 is revised to read as follows:

§ 1.492 National stage fees.

The following fees and charges are established for international applications entering the national stage under 35 U.S.C. 371:

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371:

By a micro entity (§ 1.29(a))	$70.00
By a small entity (§ 1.27(a))	$140.00
By other than a small or micro entity	$280.00

(b) Search fee for an international application entering the national stage under 35 U.S.C. 371:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all of the claims presented in the application entering the national stage:

By a micro entity (§ 1.29(a))	$0.00
By a small entity (§ 1.27(a))	$0.00
By other than a small or micro entity	$0.00

(2) If the search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a micro entity (§ 1.29(a))	$30.00
By a small entity (§ 1.27(a))	$60.00
By other than a small or micro entity	$120.00

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a micro entity (§ 1.29(a))	$120.00
By a small entity (§ 1.27(a))	$240.00
By other than a small or micro entity	$480.00

(4) In all situations not provided for in paragraphs (b)(1), (2), or (3) of this section:

By a micro entity (§ 1.29(a))	$150.00
By a small entity (§ 1.27(a))	$300.00
By other than a small or micro entity	$600.00

(c) The examination fee for an international application entering the national stage under 35 U.S.C. 371:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all of the claims presented in the application entering the national stage:

By a micro entity (§ 1.29(a))	$0.00
By a small entity (§ 1.27(a))	$0.00
By other than a small or micro entity	$0.00

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a micro entity (§ 1.29(a))	$180.00
By a small entity (§ 1.27(a))	$360.00
By other than a small or micro entity	$720.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

By a micro entity (§ 1.29(a))	$105.00
By a small entity (§ 1.27(a))	$210.00
By other than a small or micro entity	$420.00

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29(a))	$20.00
By a small entity (§ 1.27(a))	$40.00
By other than a small or micro entity	$80.00

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

By a micro entity (§ 1.29(a))	$195.00
By a small entity (§ 1.27(a))	$390.00
By other than a small or micro entity	$780.00

(g) If the excess claims fees required by paragraphs (d) and (e) of this section and multiple dependent claim fee required by paragraph (f) of this section are not paid with the basic national fee or on later presentation of the claims for which excess claims or multiple dependent claim fees are due, the fees required by paragraphs (d), (e), and (f) of this section must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(h) Surcharge for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (§ 1.491(a)) pursuant to § 1.495(c):

By a micro entity (§ 1.29(a))	$35.00
By a small entity (§ 1.27(a))	$70.00
By other than a small or micro entity	$140.00

(i) For filing an English translation of an international application or any annexes to an international preliminary examination report later than thirty months after the priority date (§ 1.495(c) and (e)):

By a micro entity (§ 1.29(a))	$35.00
By a small entity (§ 1.27(a))	$70.00
By other than a small or micro entity	$140.00

(j) Application size fee for any international application, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a micro entity (§ 1.29(a))	$100.00
By a small entity (§ 1.27(a))	$200.00
By other than a small or micro entity	$400.00

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

11. The authority citation for part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

12. Section 41.20 is revised to read as follows:

§ 41.20 Fees.

(a) *Petition fee.* The fee for filing a petition under this part is: $400.00

(b) *Appeal fees.* (1) For filing a notice of appeal from the examiner to the Patent Trial and Appeal Board:

By a micro entity (§ 1.29(a))	$250.00
By a small entity (§ 1.27(a))	$500.00
By other than a small or micro entity	$1,000.00

(2)(i) For filing a brief in support of an appeal in an application or *ex parte* reexamination proceeding: $0.00

(ii) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal in an *inter partes* reexamination proceeding:

By a micro entity (§ 1.29(a))	$500.00
By a small entity (§ 1.27(a))	$1,000.00
By other than a small or micro entity	$2,000.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a micro entity (§ 1.29(a))	$325.00
By a small entity (§ 1.27(a))	$650.00
By other than a small or micro entity	$1,300.00

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

By a micro entity (§ 1.29(a))	$500.00
By a small entity (§ 1.27(a))	$1,000.00
By other than a small or micro entity	$2,000.00

13. Section 41.37 is amended by revising paragraphs (a) and (b) to read as follows:

§ 41.37 Appeal brief.

(a) *Timing.* Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31. The appeal brief fee in an application or *ex parte* reexamination proceeding is $0.00, but if the appeal results in an examiner's answer, the appeal forwarding fee set forth in § 41.20(b)(4) must be paid within the time period specified in § 41.48 to avoid dismissal of an appeal.

(b) *Failure to file a brief.* On failure to file the brief within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

* * * * *

14. Section 41.45 is added to read as follows:

§ 41.45 Appeal forwarding fee.

(a) *Timing.* Appellant in an application or *ex parte* reexamination proceeding must pay the fee set forth in § 41.20(b)(4) within the later of two months from the date of either the examiner's answer, or a decision refusing to grant a petition under § 1.181 of this chapter to designate a new ground of rejection in an examiner's answer.

(b) *Failure to pay appeal forwarding fee.* On failure to fee set forth in § 41.20(b)(4) within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c) *Extensions of time.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

15. The authority citation for part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41,135, 311, 312, 316, 321–326 and Leahy-Smith America Invents Act, Pub. L. 112–29, sections 6(c), 6(f) and 18, 125 Stat. 284, 304, 311, and 329 (2011).

16. Section 42.15, as added at August 14, 2012, at 77 FR 48669, effective September 16, 2012, is revised to read as follows:

§ 42.15 Fees

(a) On filing a petition for *inter partes* review of a patent, payment of the following fees are due:

(1) *Inter Partes* Review request fee: $9,000.00

(2) *Inter Partes* Review Post-Institution fee: $14,000.00

(3) In addition to the *Inter Partes* Review request fee, for requesting review of each claim in excess of 20: $200.00

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting

review of each claim in excess of 15: $400.00

(b) On filing a petition for post-grant review or covered business method patent review of a patent, payment of the following fees are due:

(1) Post Grant or Covered Business Method Patent Review request fee: $12,000.00

(2) Post Grant or Covered Business Method Patent Review Post-Institution fee: $18,000.00

(3) In addition to the Post Grant or Covered Business Method Patent Review request fee, for requesting review of each claim in excess of 20: $250.00

(4) In addition to the Post Grant or Covered Business Method Patent Review request fee Post-Institution request fee, for requesting review of each claim in excess of 15: $550.00

(c) On the filing of a petition for a derivation proceeding, payment of the following fees is due:

(1) Derivation petition fee: $400.00

(2) Derivation institution and trial fee: $0.00

(d) Any request requiring payment of a fee under this part, including a written request to make a settlement agreement available: $400.00

Dated: August 29, 2012.

Deborah S. Cohn,

Commissioner for Trademarks, United States Patent and Trademark Office.

[FR Doc. 2012–21698 Filed 9–4–12; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL REGISTER

Vol. 77 Thursday,
No. 173 September 6, 2012

Part IV

The President

Proclamation 8850—National Alcohol and Drug Addiction Recovery Month, 2012
Proclamation 8851—National Childhood Cancer Awareness Month, 2012
Proclamation 8852—National Childhood Obesity Awareness Month, 2012
Proclamation 8853—National Ovarian Cancer Awareness Month, 2012
Proclamation 8854—National Preparedness Month, 2012
Proclamation 8855—National Prostate Cancer Awareness Month, 2012
Proclamation 8856—National Wilderness Month, 2012
Proclamation 8857—Labor Day, 2012

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Presidential Documents

Title 3—

The President

Proclamation 8850 of August 31, 2012

National Alcohol and Drug Addiction Recovery Month, 2012

By the President of the United States of America

A Proclamation

Every day, millions of Americans with substance use disorders commit to managing their health by maintaining their recovery from drug or alcohol addiction. People in recovery are not strangers: they are our family members, friends, colleagues, and neighbors. During National Alcohol and Drug Addiction Recovery Month, we recognize their strength and resilience. In partnership with Americans in recovery, let us rededicate ourselves to combatting prejudice surrounding addiction, removing barriers to recovery, and standing with all those seeking lives free from substance use.

My Administration is committed to advancing evidence-based recovery solutions. Over the past 3 years, we have worked to strengthen substance abuse prevention and treatment programs, and to support Americans in recovery. We have taken steps to identify and remove laws, policies, and practices that impede recovery. And as part of our 2012 *National Drug Control Strategy,* we are promoting early intervention and taking action to break the cycle of drug abuse and incarceration.

Drug and alcohol abuse continue to take a tragic toll on millions of lives across our country. Yet, while more remains to be done, men and women across our country are making great strides. This month, let us encourage their progress, celebrate the transformative power of recovery, and thank the many Americans who, often strengthened by their own experiences, are working to improve the health and safety of our communities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2012 as National Alcohol and Drug Addiction Recovery Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22145
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8851 of August 31, 2012

National Childhood Cancer Awareness Month, 2012

By the President of the United States of America

A Proclamation

Every year, thousands of children across America are diagnosed with cancer—an often life-threatening illness that remains the leading cause of death by disease for children under the age of 15. The causes of pediatric cancer are still largely unknown, and though new discoveries are resulting in new treatments, this heartbreaking disease continues to scar families and communities in ways that may never fully heal. This month, we remember the young lives taken too soon, stand with the families facing childhood cancer today, and rededicate ourselves to combating this terrible illness.

While much remains to be done, our Nation has come far in the fight to understand, treat, and control childhood cancer. Thanks to ongoing advances in research and treatment, the 5-year survival rate for all childhood cancers has climbed from less than 50 percent to 80 percent over the past several decades. Researchers around the world continue to pioneer new therapies and explore the root causes of the disease, driving progress that could reveal cures or improved outcomes for patients. But despite the gains we have made, help still does not come soon enough for many of our sons and daughters, and too many families suffer pain and devastating loss.

My Administration will continue to support families battling pediatric cancer and work to ease the burdens they face. Under the Affordable Care Act, insurance companies can no longer deny health coverage to children because of pre-existing conditions, including cancer, nor can they drop coverage because a child is diagnosed with cancer. The law also bans insurers from placing a lifetime dollar limit on the amount of coverage they provide, giving families peace of mind that their coverage will be there when they need it most. And as we work to ensure all Americans have access to affordable health care, my Administration will continue to invest in the cutting-edge cancer research that paves the way for tomorrow's breakthroughs.

This month, we pay tribute to the families, friends, professionals, and communities who lend their strength to children fighting pediatric cancer. May their courage and commitment continue to move us toward new cures, healthier outcomes, and a brighter future for America's youth.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2012 as National Childhood Cancer Awareness Month. I encourage all Americans to join me in reaffirming our commitment to fighting childhood cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22146
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8852 of August 31, 2012

National Childhood Obesity Awareness Month, 2012

By the President of the United States of America

A Proclamation

Over the past several decades, childhood obesity has become a serious public health issue that puts millions of our sons and daughters at risk. The stakes are high: if we do not solve this problem, many among America's next generation will face diabetes, heart disease, cancer, and other health problems associated with obesity. Thankfully, while more remains to be done, we are making real progress toward a healthier future for our children. During National Childhood Obesity Awareness Month, we rededicate ourselves to meeting that critical responsibility.

For more than 2 years, First Lady Michelle Obama's *Let's Move!* initiative has worked with stakeholders across the private and public sectors to expand access to nutritious food, promote physical activity, encourage healthy food choices, create healthy starts for children, and ensure families have the tools they need to make healthy decisions. Communities from coast to coast are taking action to fulfill those goals. Over 4,000 schools have established rigorous nutrition and physical activity standards through the HealthierUS School Challenge, and more than a million Americans have earned the Presidential Active Lifestyle Award by committing to healthy eating and regular exercise. The Healthy Food Financing Initiative is developing projects that increase access to healthy, affordable food in communities that currently lack these options. *Let's Move!* has also partnered with faith-based and community organizations that are expanding access to fresh fruits and vegetables in their neighborhoods, and local elected officials are leading the way in making healthy changes for cities, towns, and counties across America.

Earlier this year, my Administration implemented part of the historic Healthy, Hunger-Free Kids Act by releasing new rules for school lunches and breakfasts that ensure a higher nutritional standard—one that includes more whole grains, vegetables, and fruits, and less fat and sodium. These changes represent the first major revision to school meal requirements in more than 15 years, and they come on the heels of recent updates to the Federal Government's Dietary Guidelines for Americans. To commemorate the healthy choices families, schools, and communities are making in kitchens across America, the First Lady was proud to host the first Kids' ''State Dinner'' this summer, which welcomed 54 young chefs to the White House for a formal luncheon to celebrate their commitment to healthy, affordable recipes. To find additional information on how we can solve the problem of childhood obesity within a generation, visit www.LetsMove.gov.

Each of us can play a role in ensuring our children have the opportunity to live long, healthy lives, and by joining together in pursuit of that mission, I am confident we can build a brighter future for America's youth.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2012 as National Childhood Obesity Awareness Month. I encourage all Americans to learn about and engage in activities that promote healthy eating and greater physical activity by all our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22147
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8853 of August 31, 2012

National Ovarian Cancer Awareness Month, 2012

By the President of the United States of America

A Proclamation

This year, thousands of American women will lose their lives to ovarian cancer. They are mothers and daughters, sisters and grandmothers, community members and cherished friends—and the absence they leave in our hearts will be deeply felt forever. During National Ovarian Cancer Awareness Month, we honor those we have lost, show our support for women who bravely carry on the fight, and take action to lessen the tragic toll ovarian cancer takes on families across our Nation.

Sadly, women are all too often diagnosed with this disease when it has already reached an advanced stage. Because early detection is the best defense against ovarian cancer, it is essential that women know the risk factors associated with the disease. Women who are middle-aged or older, who have a family history of ovarian or breast cancer, or who have had certain cancers in the past are at increased risk of developing ovarian cancer. Any woman who thinks she is at risk of ovarian cancer—or who experiences symptoms, including abdominal pain, pressure, or swelling—should talk with her health care provider. To learn more, visit www.Cancer.gov.

Ongoing progress in science and medicine is moving us forward in the battle against ovarian cancer, and my Administration remains committed to improving outcomes for women suffering from this devastating illness. Through agencies across the Federal Government, we are continuing to invest in research that paves the way for a new generation of tests and treatments. Through the Centers for Disease Control's *Inside Knowledge* campaign, we are working to raise awareness about the signs and symptoms of ovarian cancer. The Affordable Care Act already bans insurance companies from dropping a woman's coverage because she has ovarian cancer, and from placing lifetime or restrictive annual dollar limits on her coverage. Beginning in 2014, the law will also prohibit insurers from denying coverage or charging higher premiums because a woman has ovarian cancer—or any other pre-existing condition.

Ovarian cancer affects the lives of far too many women every year, and the tragedy it leaves in its wake reverberates in communities across our country. This month, we stand with all those who have known the pain of ovarian cancer, and we rededicate ourselves to the pursuit of new and better ways to prevent, detect, and treat this devastating disease.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2012 as National Ovarian Cancer Awareness Month. I call upon citizens, government agencies, organizations, health care providers, and research institutions to raise ovarian cancer awareness and continue helping Americans live longer, healthier lives. I also urge women across our country to talk to their health care providers and learn more about this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22148
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8854 of August 31, 2012

National Preparedness Month, 2012

By the President of the United States of America

A Proclamation

As thousands of our fellow Americans respond to and recover from the damage done by Hurricane Isaac, we are called to remember that throughout our history, emergencies and natural disasters have tested the fabric of our country. During National Preparedness Month, we renew our commitment to promoting emergency preparedness in homes, businesses, and communities nationwide, and to building an America more ready and resilient than ever before.

Each of us has an important role to play in bolstering our preparedness for disasters of all types—from cyber incidents and acts of terrorism to tornadoes and flooding. That is why my Administration is pursuing an approach to emergency management that engages the whole community—from Federal, State, local, and tribal governments to the private sector, nonprofits, faith-based organizations, and the general public. I encourage all Americans to visit www.Ready.gov or www.Listo.gov to learn more about the risks facing their communities, find out what they can do to prepare, and join thousands of individuals from coast to coast by becoming a member of the National Preparedness Coalition. Individuals and families can also take action by building a disaster supply kit with food, water, and essential supplies in case of emergency, and by developing and sharing an emergency plan with their loved ones.

As cities and towns across our country recover from natural disasters that have spanned historic drought to devastating wildfires and storms, we are reminded of the spirit of resilience that binds us together as one people and as one American family. This month, let us honor that spirit by standing with all those affected by recent severe weather, as well as past disasters, and by taking the steps we can to protect our loved ones and our communities before disaster strikes.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2012 as National Preparedness Month. I encourage all Americans to recognize the importance of preparedness and observe this month by working together to enhance our national security, resilience, and readiness.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22149
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8855 of August 31, 2012

National Prostate Cancer Awareness Month, 2012

By the President of the United States of America

A Proclamation

Prostate cancer is among the most common cancers for men living in the United States, and despite the progress we have made in controlling it, the disease continues to take a devastating toll on thousands of lives every year. During National Prostate Cancer Awareness Month, we remember those we have lost to prostate cancer, and we renew our commitment to preventing, detecting, and treating this terrible illness.

While the causes of prostate cancer are still unknown, men with certain risk factors may be more likely to develop the disease. Most men who suffer from prostate cancer are over the age of 65; those whose fathers, brothers, or sons have had prostate cancer are also at greater risk. Prostate cancer is especially prevalent among African American men, who experience both the highest incidence and the highest mortality rates of prostate cancer. I encourage all men to visit www.Cancer.gov to learn the warning signs of this disease.

My Administration will continue to stand with men and their families in the fight against prostate cancer. To ensure patients are covered when they need it most, the Affordable Care Act prevents insurers from placing lifetime or restrictive annual dollar limits on essential health benefits—and from dropping coverage when people get sick. Beginning in 2014, the Act will also help Americans get the services they need by prohibiting insurance companies from discriminating against people with pre-existing conditions. And to advance the state of care for men with prostate cancer, my Administration will continue to support promising research that brings us closer to tomorrow's groundbreaking therapies, treatments, and prevention techniques.

Too many men will develop prostate cancer during their lifetimes. As we mark National Prostate Cancer Awareness Month, let us support the families who fight alongside them, pay tribute to the professionals who pursue the highest standards of care, and rededicate ourselves to improving outcomes for prostate cancer patients across our country.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2012 as National Prostate Cancer Awareness Month. I encourage all citizens, government agencies, private businesses, nonprofit organizations, and other groups to join in activities that will increase awareness and prevention of prostate cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22150
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8856 of August 31, 2012

National Wilderness Month, 2012

By the President of the United States of America

A Proclamation

For centuries, America's dramatic landscapes have attracted people from around the world to begin new lives and develop thriving communities on our lands. Today, our wilderness areas reflect an essential part of our national character, and as a people, we are immeasurably richer for their presence. Protected wilderness areas are recreational escapes for families, natural classrooms for students, living laboratories for scientists, irreplaceable retreats for sportsmen and women, and historical treasures for the American people. These landscapes provide clean air, clean water, and essential habitats for fish and wildlife, and they serve as critical storehouses of biodiversity. From mountains and meadows to river valleys and forests, our lands and waters also help drive local economies by creating jobs in tourism and recreation. Our open spaces are more precious today than ever before, and it is essential that we come together to protect them for the next generation.

American conservation practices inspired countries around the world during the 20th century, and my Administration is working to carry that legacy forward during the 21st. In my first months as President, I was proud to sign a public lands bill that designated more than 2 million acres of wilderness, over 1,000 miles of wild and scenic rivers, and three National Parks. We also launched the America's Great Outdoors Initiative, which laid the foundation for a comprehensive, community-driven conservation strategy that continues to engage Americans in protecting and increasing access to our natural heritage. Today, projects spanning from the Atlantic to the Pacific are helping create and enhance parks, renew and restore our rivers, and conserve our iconic open spaces.

Generations of visionary leaders and communities have given of themselves to preserve our wild landscapes, fulfilling a responsibility that falls to us all as Americans and as inhabitants of this small planet. During National Wilderness Month, let us celebrate the progress we have made toward meeting that essential challenge, and let us recommit to protecting the land we love for centuries to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2012 as National Wilderness Month. I invite all Americans to visit and enjoy our wilderness areas, to learn about their vast history, and to aid in the protection of our precious national treasures.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22152
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8857 of August 31, 2012

Labor Day, 2012

By the President of the United States of America

A Proclamation

Through times of prosperity and hardship alike, America counts on the strength and dynamism of the world's finest labor force. From the factory floor and the office to the classroom and the interstate, working men and women are the unshakable foundation of American innovation and economic growth. On Labor Day, we celebrate their vital role and reaffirm that America will always stand behind our workers.

The rights and benefits we enjoy today were not simply handed to working men and women; they had to be won. Brick by brick, America's labor unions helped raise the landmarks of middle-class security: the 40-hour workweek and weekends, paid leave and pensions, the minimum wage and health insurance, Social Security and Medicare. These are the victories that make our Nation's promise possible—the idea that if we work hard and play by the rules, we can make a better life for ourselves and our families.

I am committed to preserving the collective bargaining rights that helped build the greatest middle class the world has ever known. It is the fundamental right of every American to have a voice on the job, and a chance to negotiate for fair pay, safe working conditions, and a secure retirement. When we uphold these basic principles, our middle class grows and everybody prospers.

Our Nation faces tough times, but I have never stopped betting on the American worker. This is the labor force that revolutionized the assembly line and built the arsenal of democracy that defeated fascism in World War II. These are the workers who built our homes, highways, and rail lines, who educate our children and care for the sick. American workers have taken us through the digital revolution and into a 21st-century economy. As my Administration fights to create good jobs and restore the American dream, I am confident that, together, we will emerge from today's challenges as we always have—stronger than ever before.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 3, 2012, as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that honor the contributions and resilience of working Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22155
Filed 9–5–12; 11:15 am]
Billing code 3295–F2–P

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H.R. 1402/P.L. 112–170

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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