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Federal Register

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, 226, and 245

RIN 0584–AE14

Child Nutrition Programs: Nondiscretionary Amendments Related to the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements several nondiscretionary provisions of the Healthy, Hunger-Free Kids Act of 2010, including those related to categorical eligibility for foster children, removal of limits on private nonprofit sponsors, outreach to eligible families, simplification of area eligibility for day care homes, application of school food safety requirements, and permanent agreements for institutions and sponsors. These provisions will make it easier for children to get nutritious meals when they are away from home, while requiring State and local agencies to make relatively minor changes in the procedures they use to operate the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program.

DATES: This rule is effective April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Suite 640, Alexandria, VA 22302–1594, or telephone 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296, makes important improvements to the Child Nutrition Programs that serve the nation's children. It provides for improved access to nutrition assistance through program expansion, outreach, and modifications in administration of the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP).

This rulemaking codifies the following nondiscretionary amendments into Title 7 of the Code of Federal Regulations, as they apply to parts 210, 215, 220, 225, 226, and 245:

- Confer categorical eligibility for free meals and free milk to foster children whose care and placement is the responsibility of a State foster care agency or a court.
- Eliminate an existing limitation on the number of sites that private nonprofit sponsors may be approved to operate in SFSP.
- Require each State agency administering the National School Lunch Program to ensure that school food authorities cooperate with SFSP sponsors to distribute materials to inform families of the availability of free and reduced-price breakfast during the school year and of free meals when the school year ends.
- Expand the allowable sources of income information to include data from any school to determine area eligibility for day care homes in CACFP.
- Specify that, as a condition of eligibility, applications for free or reduced-price meals and free milk include only the last four digits of the social security number of the adult who signs the application, in lieu of the complete social security number.
- Eliminate collection of social security numbers for verification of free and reduced-price meal eligibility.
- Specify that the school food safety program established for meals served through the school meal programs applies to any facility, or part of a facility, in which foods are stored, prepared, or served.
- Require State agencies and SFSP sponsors to enter into permanent agreements.
- Require State agencies and CACFP institutions to enter into permanent agreements.
- Clarify the definition of ''areas in which poor economic conditions exist'' in SFSP.
- Clarify revenue and accrual requirements from foods sold in schools outside of the reimbursable meals programs.

II. Implementation

Categorical Eligibility of Foster Child

Section 102 of HHFKA amends sections 9(b)(12)(A) and 9(d)(2)(F) of the Richard B. Russell National School Lunch Act, (NSLA), 42 U.S.C. 1758(b)(12)(A) and (d)(2)(F), to provide categorical eligibility for free meals, without further application or eligibility determination, to any foster child whose care and placement is the responsibility of the State or who is placed by a court with a caretaker household. Section 102 also amends section 9(b)(5) of NSLA to allow the local educational agency, to certify any foster child as eligible for free meals, without application, by directly communicating with the appropriate State or local child welfare agency to obtain documentation of a child's status. In accordance with section 17(c)(4), of NSLA, 42 U.S.C. 1766(c)(4), and section 13(a) of the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1773(e)(1)(A),child care institutions and sponsors may similarly certify any foster child as categorically eligibility for free meals without further application.

These provisions require changes in the way free and reduced-price meals applications are handled. Previously, the application process outlined in the regulations considered a foster child as a household of one. A guardian was required to complete a separate application on behalf of each foster child. The application required provision of information, including the foster child's name and any personal income received by the child.

Under the amendments to section 9(b)(12)(A) of NSLA, effective retroactively on October 1, 2010, a child who is formally placed by a court or an agency that administers a State plan under parts B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.), or a child who is placed with a caretaker household by a court becomes automatically eligible for free meals. In

accordance with section 3(a)(4) of CNA, 42 U.S.C. 1772(a)(4), a child would also be automatically eligible for free milk. The Food and Nutrition Service (FNS) encourages local education agencies, institutions, and sponsors in the Child Nutrition Programs to communicate with State and local child welfare agencies and establish formal procedures so they can receive information directly from the foster care agencies to facilitate certification for free meals or free milk for children in foster care. If the appropriate foster care agency does not initially provide documentation for a categorically eligible foster child, an application identifying the child as a foster child must be completed. Documentation or direct contact with a State or local child welfare agency or a court where the child received placement is not required unless the household's application is selected for verification.

FNS issued a memorandum, SP 17–2011, CACFP 08–2011, SFSP 05–2011: *Child Nutrition Reauthorization 2010: Categorical Eligibility of Foster Children,* on January 31, 2011, and additional guidance on March 16, 2011, to help State agencies begin implementing this Program modification. FNS also revised the prototype free and reduced-price school meals application and the CACFP meal benefit income eligibility form and supporting materials. To facilitate access and communication among Program operators and households, FNS has also revised and translated the prototype application materials into 33 languages. They are available on the FNS Web site at *http://www.fns.usda.gov/cnd/frp/frp.process.htm* and *http://www.fns.usda.gov/cnd/care/Benefit_Forms/Translations.htm.*

Accordingly, this final rule amends Program regulations to add categorical eligibility for free meals and free milk for a child whose care and placement is the responsibility of a State foster care agency or a court. This rule makes corresponding changes to 7 CFR 210.9(b), 220.7(e), 225.2 (definition of *Foster child*), 225.15(e), 225.15(f), 226.2 (definitions of *Foster child* and *Free meal*), 226.23(c), 226.23(d), 226.23(e), 245.2 (definitions of *Categorically eligible, Direct certification, Documentation,* and *Foster child*), 245.5(a), 245.6(a) 245.6(b), 245.6(c), 245.6a(a), 245.6a(c), and 245.6a(f).

Alignment of Eligibility Rules for Public and Private Sponsors

The Summer Food Service Program (SFSP) is authorized under section 13 of NSLA, 42 U.S.C. 1761. Its primary purpose is to provide nutritious meals to children from low-income areas during periods when schools are closed for vacation.

Section 111 of HHFKA amends section 13(a) of NSLA, 42 U.S.C. 1761(a), to clarify the definition of ''private nonprofit'' in SFSP and expand the limits on the number of sites and children that private nonprofit organization sponsors may serve. Section 111 of HHFKA also specifies that private nonprofit organizations must have private nonprofit status under section 501(c) of the Internal Revenue Code of 1986, 26 U.S.C. 1.501(c)(3)–1, and be exempt from taxation under section 501(a) of that Code, 26 U.S.C. 1.501(a)–1. Section 441 of HHFKA further amends section 13(a) of NSLA to clarify how the geographic area that determines the location and eligibility of sites is defined.

Previously, statutory and regulatory limitations permitted private nonprofit sponsors to operate no more than 25 sites, with no more than 300 children served at any one site unless granted a waiver by the State agency. Private nonprofit sponsors could only operate in areas where school food authorities were not intending to participate. The new amendments to section 13(a)(7) of NSLA removed the statutory restrictions and aligned the eligibility criteria for schools, public agencies, and private nonprofit organizations, establishing the same opportunities for all types of sponsors.

Effective retroactively on October 1, 2010, private nonprofit sponsors are eligible to participate in SFSP under the same terms as other service institutions. All sponsors may now be approved to operate a maximum of 200 sites and serve a maximum total average daily attendance of 50,000 children. Exceptions to these limits may be approved by State agencies, if the sponsor can demonstrate that its organization has the ability to manage a larger program.

FNS issued a memorandum, SFSP 02–2011: *Child Nutrition Reauthorization 2010: Eligibility Requirements and Site Limits for Private Nonprofit Organizations in the Summer Food Service Program,* on January 14, 2011, to help State agencies begin implementing this Program modification. Accordingly, this final rule amends Program regulations to eliminate an existing limitation on the number of sites that private nonprofit sponsors may be approved to operate, and identify the applicable sections of the Internal Revenue Code for private nonprofit organizations to certify tax exemption and Program eligibility. This rule makes corresponding changes to 7 CFR 225.2 (*Private nonprofit,* and *Private nonprofit organization*), 225.6(b)(6), and 225.14(d)(6).

Outreach to Eligible Families

Section 112 of HHFKA establishes requirements for conducting outreach in SFSP and the School Breakfast Program. It adds section 13(a)(11) to NSLA, 42 U.S.C. 1761(a)(11), to coordinate outreach to families, in an effort to help more children benefit from the nutritious meals served in the School Breakfast Program during the school year, and in SFSP when the school year ends.

This new provision requires school food authorities to cooperate with SFSP sponsors, to the maximum extent practicable, to distribute materials informing families of the availability and location of free SFSP meals when school is not in session. School food authorities must also inform families of the availability of reimbursable breakfasts at school during the school year. State agencies that administer the National School Lunch Program must ensure that school food authorities implement activities to inform families. If the State agency administering SFSP is not the same State agency that administers the National School Lunch Program, then both agencies must work together to ensure that these requirements are met.

To help State agencies begin implementing this provision, FNS issued a memorandum, SP 15–2011, SFSP 04–2011: *Child Nutrition Reauthorization 2010: Outreach to Households on the Availability of Summer Food Service Program Meals,* on January 25, 2011. FNS issued additional guidance, SP 40–2011: *Child Nutrition Reauthorization 2010: Outreach to Households on the Availability of the School Breakfast Program* on June 15, 2011.

Accordingly, this final rule amends Program regulations to require each State agency administering the National School Lunch Program to ensure cooperation among school food authorities, SFSP sponsors, and if applicable, alternate State agencies, to inform families of the availability of free and reduced-price breakfast during the school year and of free meals through SFSP when school is not in session. This rule makes corresponding changes by adding new paragraphs at 7 CFR 210.12(d) and 210.19(g).

Simplifying Area Eligibility Determinations

The Child and Adult Care Food Program (CACFP) is authorized under

section 17 of NSLA, 42 U.S.C. 1766, to provide the nutrition that contributes to the wellness, healthy growth, and development of young children in family and group day care homes. CACFP targets higher levels of reimbursement to day care homes in low-income areas.

Section 121 of HHFKA amends section 17(f)(3)(A)(ii)(I)(bb) of NSLA, 42 U.S.C. 1766(f)(3)(A)(ii)(I)(bb), to allow family and group day care homes to be classified as tier I, for purposes of higher reimbursement, if the home is located in an attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free and reduced-price school meals. Each year, the National School Lunch Program State agency is responsible for compiling data into a list of area-eligible schools, and transmitting this list to the CACFP State agency. The CACFP sponsoring organization is responsible for determining day care home classifications for tier I reimbursement. Determination of a day care home's eligibility for tier I reimbursement is valid for five years.

Previously, only the enrollment of the local elementary school could be used to determine tier I eligibility. Effective retroactively on October 1, 2010, the day care home's eligibility may be determined by the enrollment of any local school, as long as the home is located within the selected school's attendance area. FNS issued a memorandum, CACFP 05–2011: *Child Nutrition Reauthorization 2010: Area Eligibility for Family Day Care Homes,* on December 22, 2010, and a subsequent revision on January 10, 2011, to advise States that any elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free and reduced-price school meals may be used to make tier I determinations for homes in the local area.

Accordingly, this final rule amends Program regulations to establish CACFP area eligibility for family day care homes located in the attendance area of any school where at least 50 percent of the enrolled children are certified eligible for free and reduced-price meals. This rule makes corresponding changes to 7 CFR 210.9(b)(21), 210.19(f), 226.2 (definitions of *Eligible area* and *Tier I day care home*) 226.6(f), 226.15(e), 226.15(f), and 226.17a(1)(i).

Privacy Protection

Section 301 of HHFKA amends section 9(d)(1) of NSLA, 42 U.S.C. 1758(d)(1), by removing the requirement that the adult household member who signs a household application for free and reduced-price lunches must also provide his or her complete nine-digit social security number, as a condition of eligibility. In accordance with section 4(e)(1) of CNA, 42 U.S.C. 1773(e)(1), the provision of a social security number is required for applications for free and reduced-price breakfast, as well. This amendment also removes the requirement that the social security number of each household member be collected to verify applications. However, no change was made to any of the confidentiality requirements of NSLA regarding the use and disclosure of information obtained from an application for free and reduced-price meals.

The new amendments to section 9(d)(1) of NSLA, effective retroactively on October 1, 2010, require that the adult household member signing the free and reduced-price application provide only the last four digits of the social security number. USDA expects this change to increase privacy protections for households applying for free and reduced-price meals and free milk in the Child Nutrition Programs.

Collection of a partial social security number does not require protection under section 7(b) of the Privacy Act of 1974, 5 U.S.C. 552a note. Therefore, the Privacy Act statement, currently found at 7 CFR 245.6(a)(8), addressing the use of the social security number in determining individual eligibility for free meals and free milk benefits is no longer required.

These statutorily-driven amendments do not change how applications for free and reduced-price meals or free milk are evaluated. An application that does not include the last four digits of the social security number of the adult household member, or an indication that the adult does not have a social security number, will be considered incomplete for purposes of determining eligibility for benefits in the Child Nutrition Programs.

FNS issued a memorandum, SP 19–2011, CACFP 09–2011, SFSP 06–2011: *Child Nutrition Reauthorization 2010: Privacy Protection and the Use of Social Security Numbers in Child Nutrition Programs,* on February 15, 2011. FNS has revised the prototype free and reduced-price school meals application and the CACFP meal benefit income eligibility form and supporting materials. They are available on the FNS Web site at *http://www.fns.usda.gov/cnd/frp/frp.process.htm* and *http://www.fns.usda.gov/cnd/care/Benefit_Forms/Translations.htm.*

FNS has also revised the Eligibility Manual for School Meals to give practical guidance to help State and local operators achieve the goals of these provisions. This manual contains information on Federal requirements for schools, institutions, and sponsors that must establish individual eligibility for free and reduced-price meals or free milk. It is found on the FNS Web site at *http://www.fns.usda.gov/cnd/guidance/default.htm.*

Accordingly, this final rule amends Program regulations to specify that, as a condition of eligibility, applications for free and reduced-price meals and free milk must include the last four digits of the social security number of the adult household member who signs the application. This rule modifies the application verification process by eliminating the collection of social security numbers. It also eliminates specific references to section 7(b) of the Privacy Act of 1974, 5 U.S.C. 552a note, regarding the collection of social security numbers. As noted above, this rule does not change the confidentiality requirements regarding the use and disclosure of information that appear elsewhere in NSLA. Additionally, this rule does not change the current regulatory provision that allows the adult household member who signs the application to indicate that the adult does not have a social security number. This rule makes corresponding changes to 7 CFR 215.13a(f), 215.13a(i), 225.2 (definitions of *Adult* and *Documentation*), 225.15(f), 226.2 (definitions of *Adult* and *Documentation*), 226.23(e), 226.23(h), 245.2 (definition of *Documentation*), 245.6(a), 245.6(h), and 245.6a(f).

Applicability of Food Safety Programs for the Entire School Campus

Section 302 of HHFKA amends section 9(h)(5) of NSLA, 42 U.S.C. 1758(h)(5), to strengthen food safety requirements in the National School Lunch Program, School Breakfast Program, and all other Child Nutrition Programs operated in a school. NSLA now requires that Hazard Analysis and Critical Control Point (HACCP) principles for safe food handling be applied to any facility, or part of a facility in which food for any Child Nutrition Program is stored, prepared, or served.

Section 402 of HHFKA further amends section 9(h) of NSLA to extend State food safety audit and reporting requirements through fiscal year 2015. Therefore, State agencies must continue to report to FNS, by November 15 of each year, the number of food safety inspections received by schools in their States during the prior school year.

The school food safety program has been statutorily required in school

cafeterias since 2004. It requires school food authorities to apply HACCP principles to address food safety in all aspects of school meal preparation and meal service.

To comply with the requirements of section 9(h)(5) of NSLA, FNS anticipates that only minor modifications to existing Child Nutrition Program operations will be needed. For example, school food authorities may apply their current procedures for safe food handling in the cafeteria to other locations, including school buses, hallways, school courtyards, kiosks, and classrooms, where food is stored, prepared, or served. As a result, State agencies will need to review the schools' food safety programs to ensure that standard operating procedures for safe food handling are updated to include locations outside of the cafeteria.

FNS issued a memorandum, SP 37–2011: *Child Nutrition Reauthorization 2010: Enhancing the School Food Safety Program,* on May 18, 2011, advising State agencies of the new food safety provisions. FNS will also provide additional food safety guidance, as needed, to help State and local operators comply with the requirements of this provision.

Accordingly, this final rule amends Program regulations to specify that the school food safety program established for meals served through the school meal programs applies to any facility, or part of a facility, in which foods are stored, prepared, or served. This rule makes corresponding changes to 7 CFR 210.13(c) and 220.7(a)(3). This rule also makes corresponding changes to 7 CFR 210.20(a)(8), 210.20(b)(12), and 220.13(b)(3) to extend State food safety audit and reporting requirements through fiscal year 2015.

Permanent Operating Agreements

Section 321 of HHFKA amends section 13(b) of NSLA, 42 U.S.C. 1761(b), to require permanent operating agreements between State agencies and all sponsors that are approved to participate in SFSP. Similarly, section 331(a) of HHFKA amends section 17(d)(1) of NSLA, 42 U.S.C. 1766(d)(1), to require permanent operating agreements between State agencies and child or adult care institutions in CACFP.

The use of permanent agreements is not new to State agencies administering SFSP and CACFP. Section 9(i) of NSLA, 42 U.S.C. 1758(i), has required States which administer any combination of Child Nutrition Programs within the same State administering agency, to use a single permanent agreement for all programs operated by a school food authority under that State agency. Section 9(i) of NSLA also requires that multiple programs operated by an alternate State agency would use a single permanent agreement.

CACFP regulations at 7 CFR 226.6(b)(4)(ii) give State agencies the authority to enter into permanent agreements with any institution. SFSP regulations at 7 CFR 225.6(e) instruct State agencies to enter into permanent agreements with school food authority sponsors, and the memorandum SFSP 03–2007: *Permanent Agreements for All Summer Food Service Program Sponsors,* issued by FNS on February 23, 2007, extends to State agencies the authority to establish permanent agreements with any type of SFSP sponsor.

Effective retroactively on October 1, 2010, the new provisions under sections 13(b)(3) and 17(d)(1)(E) of NSLA now require State agencies to establish permanent operating agreements with all approved sponsors and child or adult care institutions. FNS issued a memorandum, CACFP 07–2011, SFSP 03–2011: *Child Nutrition Reauthorization 2010: Permanent Agreements in the Summer Food Service Program and the Child and Adult Care Food Program,* on January 14, 2011, to implement these provisions.

Accordingly, this final rule amends Program regulations to require State agencies to enter into permanent agreements with approved sponsors in SFSP and with approved child or adult care institutions in CACFP. This rule makes corresponding changes to 7 CFR 225.6(e), 226.6(b), 226.6(c), 226.16(f), and 226.17a(f). Additional provisions of sections 331(b) and (c) of HHFKA make a number of modifications to CACFP applications, reviews, and agreements between sponsoring organizations and their facilities. FNS intends to address implementation of those discretionary provisions in a separate rulemaking.

Technical Amendments

Section 441 of HHFKA includes a technical amendment that clarifies the definition of ''area in which poor economic conditions exist'' that appears under section 13 of NSLA, 42 USC 1761. The definition now specifically states that SFSP sites must be located in the attendance area of a school to qualify as area eligible. This clarification is consistent with how FNS and States have always interpreted area eligibility on the basis of free and reduced-price school meal data. Accordingly, this rule makes a corresponding change to 7 CFR 225.2 (definition of *Areas in which poor economic conditions exist*).

Section 206 of HHFKA includes an amendment to section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) regarding revenue from foods sold in schools outside of the reimbursable meals programs. FNS published an interim rule, National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010, 76 FR 35301, on June 17, 2011, to clarify that revenue from these non-program foods must accrue to the nonprofit school food service. The interim rule addressed these revenue and accrual requirements only under 7 CFR 210.14, without amending 7 CFR 210.11. Accordingly, this rule makes a corresponding change to 7 CFR 210.11(b) to address these requirements.

This rule also includes amendments to correct technical errors that appeared in the final rule, Nutrition Standards in the National School Lunch and School Breakfast Programs, 77 FR 4088, published on January 26, 2012. That rule updated school meal patterns to align them with the Dietary Guidelines for Americans. However, the published rule misstated the required percentage of whole grains and the number of food components to offer to children. Accordingly, this rule makes a corresponding change to 7 CFR 210.10(c)(2)(iv)(A) to specify that creditable whole grain-rich foods contain at least 50 percent whole grains and the remaining grain content of the product must be enriched. This rule also makes corresponding changes to 7 CFR 210.2 (definitions of *Food component* and *Food item*) and 210.10(e) to remove errors regarding the number of food components.

This rule makes several additional technical changes to 7 CFR parts 210, 225, 226, and 245. We are using this opportunity to fix a small number of outdated regulatory citations, obsolete terms of usage, typographical errors, and misspelled words. None of the technical changes will effect a substantive change in the Programs. Accordingly, this rule amends Program regulations to:

- Replace references to the Food Stamp Program, renamed the Supplemental Nutrition Assistance Program (SNAP), that now appear under 7 CFR 226.23(e)(1)(iv)(A), 226.23(e)(2)(vi)(A), 226.23(e)(2)(vi)(B), 226.23(h)(2)(v)(A), and 245.6a(f)(3).
- Correct the citation that references school selection criteria at 7 CFR 210.18(e).
- Remove two obsolete citations that reference the free meal policy statement in 7 CFR 225.6(c)(4).
- Correct citations that reference invitation for bid requirements in

paragraphs 7 CFR 225.6(c)(2)(ii)(C) and 225.6(c)(3)(ii)(C) and late submission of claims at 7 CFR 225.13(a).

• Replace the term ''handicap'' with the term ''disability'' in 7 CFR 225.6(c)(4)(ii)(F).

• Correct the typographical error in 7 CFR 225.18(g) which misstates the $25,000 fraud limit penalty as $100,000.

• Correct the citation that references tax-exempt requirements in 7 CFR 226.6(f)(3)(iv)(*C*).

• Remove an incorrect citation of appeal rights for day care homes at 7 CFR 226.6(b)(3) and extra punctuation at 7 CFR 226.17(b)(4).

• Correct the spellings of ''eligibility'' in 7 CFR 226.4(b), ''institution's'' in 7 CFR 226.6(c)(2)(iii)(A)(6), ''ranges'' in 7 CFR 226.6(d)(3)(iv)(C), and ''member'' in 7 CFR 226.23(e)(1)(iv).

III. Procedural Matters

Notice and Comment

In accordance with the Secretary of Agriculture's Statement of Policy (36 FR 13804), this rule is exempt from the notice and comment provisions of the Administrative Procedures Act, 5 U.S.C. 553, normally required before the adoption of final rulemaking, As this preamble explains, all of the HHFKA amendments adopted as final in this rule are nondiscretionary. USDA has not exercised any authority in interpreting the statutory provisions beyond the language that is specifically provided in the law. Therefore, notice and comment would serve no useful purpose in the promulgation of these regulations.

Executive Order 12866

This rule has been determined to be not significant. In conformance with Executive Order 12866, this rule was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule has not been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612. FNS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule incorporates into the regulations governing Child Nutrition Programs authorized under NSLA and the Child Nutrition Act of 1966, as amended, nondiscretionary statutory provisions set forth in HHFKA.

Although the provisions may be applicable to State agencies, local educational agencies, school food authorities, child care institutions, adult care institutions, and sponsors that administer or operate these programs, they will not have significant economic impact on any of those entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. Under section 202 of UMRA, FNS must generally prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When this statement is needed, section 205 of UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives, and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates of $100 million or more in any one year under the regulatory provisions of Title II of UMRA for State, local, or tribal governments, or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

Executive Order 12372

The nutrition assistance programs affected by this rulemaking are listed in the Catalog of Federal Domestic Assistance as follows:

• National School Lunch Program, No. 10.555

• School Breakfast Program, No. 10.553

• Special Milk Program, No. 10.556

• Child and Adult Care Food Program, No. 10.558

• Summer Food Service Program, No. 10.559

For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where these actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121. FNS has considered the impact of this final rule on State and local governments and has determined that it does not have federalism implications. Therefore, under section 6(b) of this Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is intended to have retroactive effect, as authorized under HHFKA. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA regulations, 4300–4, ''Civil Rights Impact Analysis,'' and 1512–1, ''Regulatory Decision Making Requirements.'' After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age, or disability, nor is it intended to have a differential impact on minority-owned or operated business establishments, and woman-owned or operated business establishments that participate in the programs affected by this rulemaking.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes.

In Spring 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of HHFKA on tribes or Indian Tribal governments. FNS coordinated five consultation sessions that provided the opportunity to address Tribal concerns and gain input from elected Tribal officials or their designees

concerning the impact of this rule on Tribal governments, communities, and individuals.

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of Fiscal Year 2012 as an opportunity for collaborative conversations with Tribal officials and their designees.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35; see 5 CFR part 1320, requires OMB to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 210, 215, 220, 225, 226 and 245 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.2, revise the definitions of *Food component* and *Food item* to read as follows:

§ 210.2 Definitions.

* * * * *

Food component means one of the food groups which comprise reimbursable meals. The food components are: Meats/meat alternates, grains, vegetables, fruits, and fluid milk. Meals offered to preschoolers must consist of: Meats/meat alternates, grains, vegetables/fruits, and fluid milk.

Food item means a specific food offered within a food component.

* * * * *

■ 3. In § 210.9:

■ a. Remove the word ''or'' at the end of paragraph (b)(19)(iv).

■ b. In paragraph (b)(19)(v), remove the period at the end of the sentence and add, in its place, the term ''; or''.

■ c. Add new paragraph (b)(19)(vi).

■ d. In paragraph (b)(21), remove the word ''elementary'' each time it appears.

The addition reads as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(19) * * *

(vi) The child is a foster child as defined in § 245.2 of this chapter.

* * * * *

§ 210.10 [Amended]

■ 4. In § 210.10:

■ a. In paragraph (c)(2)(iv)(A), remove the number ''51'' and add, in its place, the number ''50''.

■ b. In paragraph (e), remove the word ''items'' and add, in its place, the word ''components''.

§ 210.11 [Amended]

■ 5. In § 210.11, remove the words ''or the school or student organizations approved by the school'' at the end of the third sentence of paragraph (b).

■ 6. In § 210.12, add new paragraph (d) to read as follows:

§ 210.12 Student, parent and community involvement.

* * * * *

(d) *Outreach activities.* (1) To the maximum extent practicable, school food authorities must inform families about the availability breakfasts for students. Information about the School Breakfast Program must be distributed just prior to or at the beginning of the school year. In addition, schools are encouraged to send reminders regarding the availability of the School Breakfast Program multiple times throughout the school year.

(2) School food authorities must cooperate with Summer Food Service Program sponsors to distribute materials to inform families of the availability and location of free Summer Food Service Program meals for students when school is not in session.

■ 7. In § 210.13, revise the introductory text of paragraph (c) to read as follows:

§ 210.13 Facilities management.

* * * * *

(c) *Food safety program.* The school food authority must develop a written food safety program that covers any facility or part of a facility where food is stored, prepared, or served. The food safety program must meet the requirements in paragraph (c)(1) or paragraph (c)(2) of this section, and the requirements in § 210.15(b)(5).

* * * * *

§ 210.18 [Amended]

■ 8. In § 210.18, remove the term ''(e)(1)'' in the introductory text of paragraph (e), and add, in its place, the term ''(e)(2)''.

■ 9. In § 210.19:

■ a. In paragraph (f), remove the word ''elementary''.

■ b. Add new paragraph (g).

The addition reads as follows:

§ 210.19 Additional responsibilities.

* * * * *

(g) *Program outreach.* State agencies must ensure that school food authorities conduct the outreach activities required under § 210.12(d). If the State agency administering the Summer Food Service Program is not the same State agency

that administers the National School Lunch Program, then the two State agencies must work together to implement outreach measures.

■ 10. In § 210.20:

■ a. In paragraph (a)(8), remove the words ''2008–2009'' and add, in their place, the words ''2014–2015''.

■ b. Revise paragraph (b)(12).

The revision reads as follows:

§ 210.20 Reporting and recordkeeping.

* * * * *

(b) * * *

(12) Records supplied by the school food authorities showing the number of food safety inspections obtained by schools for the current and three most recent school years.

* * * * *

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 11. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 12. In § 215.13a:

■ a. Revise paragraph (f).

■ b. In paragraphs (i)(1) and (i)(2), remove the term ''Privacy Act notice/''.

The revision reads as follows:

§ 215.13a Determining eligibility for free milk in child-care institutions.

* * * * *

(f) *Statement requirements.* The free milk application provided to households must include a statement informing households of how information provided on the application will be used. Each application must include substantially the following statement: ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free milk. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other FDPIR identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free milk, and for administration and enforcement of the Program.'' When the State agency or child care institution, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section must be added to this statement. State agencies and child care institutions are responsible for drafting the appropriate statement.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

■ 13. The authority for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 14. In § 220.7:

■ a. Revise paragraph (a)(3).

■ b. At the end of paragraph (e)(14)(ii)(D), remove the word ''or''.

■ c. At the end of paragraph (e)(14)(ii)(E), remove the period and add, in its place, the term ''; or''.

■ d. Add new paragraph (e)(14)(ii)(F).

The revision and addition read as follows:

§ 220.7 Requirements for participation.

(a) * * *

(3) The school food authority must implement a food safety program meeting the requirements of §§ 210.13(c) and 210.15(b)(5) of this chapter at each facility or part of a facility where food is stored, prepared, or served.

* * * * *

(e) * * *

(14) * * *

(ii) * * *

(F) The child is a foster child as defined in § 245.2 of this chapter.

* * * * *

■ 15. In § 220.13, revise paragraph (b)(3) to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(b) * * *

(3) For each of school years 2005–2006 through 2014–2015, each State agency shall monitor school food authority compliance with the food safety inspection requirement in § 220.7(a)(2) and submit an annual report to FNS documenting school compliance based on data supplied by the school food authorities. The report must be filed by November 15 following each of school years 2005–2006 through 2014–2015, beginning November 15, 2006. The State agency shall keep the records supplied by the school food authorities showing the number of food safety inspections obtained by schools for the current and three most recent school years.

* * * * *

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 16. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a)

■ 17. In § 225.2:

■ a. In the definition of *Adult,* after the word ''collection'', add the words ''of the last four digits''.

■ b. In the definition of *Documentation,* revise paragraph (a)(4).

■ c. Revise the definitions of *Areas in which poor economic conditions exist, Private nonprofit,* and *Private nonprofit organization.*

■ d. Add a new definition of *Foster child* in alphabetical order.

The revisions and addition read as follows:

§ 225.2 Definitions.

* * * * *

Areas in which poor economic conditions exist means:

(a) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(b) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(c) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced-price meals under the National School Lunch Program and the School Breakfast Program; or

(d) A closed enrolled site.

* * * * *

Documentation means:

(a) * * *

(4) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number; or

* * * * *

Foster child means a child who is formally placed by a court or a State child welfare agency, as defined in § 245.2 of this chapter.

* * * * *

Private nonprofit means tax exempt under section 501(a) of the Internal Revenue Code of 1986, as amended.

Private nonprofit organization means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) that:

(a) Exercises full control and authority over the operation of the Program at all sites under the sponsorship of the organization;

(b) Provides ongoing year-round activities for children or families;

(c) Demonstrates that the organization has adequate management and the fiscal capacity to operate the Program;

(d) Is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

(e) Meets applicable State and local health, safety, and sanitation standards.

* * * * *

■ 18. In § 225.6:

■ a. Revise paragraph (b)(6).

■ b. In paragraph (c)(2)(ii)(C), remove the term ''225.15(h)'' and add, in its place, the term ''225.15(m)''.

■ c. In paragraph (c)(3)(ii)(C), remove the term ''225.15(g)'' and add, in its place, the term ''225.15(m)''.

■ d. In paragraphs (c)(4)(i) and (c)(4)(ii), remove the words ''paragraph (c)(3) of'' both times they appear.

■ e. In paragraph (c)(4)(ii)(F), remove the word ''handicap'' and add, in its place, the word ''disability''.

■ f. Revise the introductory text in paragraph (e).

The revisions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(b) * * *

(6) The State agency must not approve any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day. However, the State agency may approve exceptions if the applicant can demonstrate that it has the capability of managing a program larger than these limits.

* * * * *

(e) *State-Sponsor Agreement.* A sponsor approved for participation in the Program must enter into a permanent written agreement with the State agency. All sponsors must agree in writing to:

* * * * *

§ 225.13 [Amended]

■ 19. In § 225.13, remove the term ''§ 225.9(d)(5)'' both times it appears in paragraph (a) and add, in its place, the term ''§ 225.9(d)(6)''.

■ 20. In § 225.14, revise paragraph (d)(6) to read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(d) * * *

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Exercises full control and authority over the operation of the Program at all sites under the sponsorship of the organization;

(ii) Provides ongoing year-round activities for children or families;

(iii) Demonstrates that the organization has adequate management and the fiscal capacity to operate the Program;

(iv) Is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

(v) Meets applicable State and local health, safety, and sanitation standards.

■ 21. In § 225.15:

■ a. Remove the words ''children who are members of households'' in the last sentence of paragraph (e) and add, in their place, the words ''a foster child and children who are members of households''.

■ b. In paragraph (f)(2)(iii), after the first word ''The'', add the words ''last four digits of the''.

■ c. In paragraph (f)(4)(ii), before the word ''child,'' add the word ''foster''.

■ d. Remove paragraph (f)(4)(iii).

■ e. Redesignate paragraphs (f)(4)(iv) through (viii) as paragraphs (f)(4)(iii) through (vii) respectively.

■ f. Revise redesignated paragraph (f)(4)(iii).

■ g. Revise paragraph (f)(5).

■ h. In paragraphs (i)(1) and (i)(2), remove the term ''Privacy Act notice/''.

The revisions read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(f) * * *

(4) * * *

(iii) A statement informing households of how information provided on the application will be used. Each application for free meals must include substantially the following statement:

(A) ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced-price meals. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, and with auditors for program reviews and law enforcement officials to help them look into violations of program rules.''

(B) When the State agency or sponsor, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section, must be added to the statement. State agencies and sponsors are responsible for drafting the appropriate notice.

* * * * *

(5) *Verifying information on Program applications.* Households selected to verify information on their Program applications must be notified in writing that:

(i) They will lose Program benefits or be terminated from participation if they do not cooperate with the verification process;

(ii) They will be given the name and phone number of an official who can assist in the verification process;

(iii) Verification may occur during program reviews, audits, and investigations;

(iv) Verification may include contacting employers, SNAP or welfare offices, or State employment offices to determine the accuracy of statements on the application about income, receipt of SNAP, FDPIR, TANF, or unemployment benefits; and

(v) They may lose benefits or face claims or legal action if incorrect information is reported on the application.

* * * * *

§ 225.18 [Amended]

■ 22. In § 225.18, remove the term ''$100,000'' in paragraph (g) and add, in its place, the term ''$25,000''.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 23. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 24. In § 226.2:
■ a. In the definition of *Adult,* after the word ''collection'', add the words ''of the last four digits''.
■ b. In the definition of *Documentation,* revise paragraph (a)(4).
■ c. Revise the definition of *Eligible area.*
■ d. Add a new definition of *Foster child* in alphabetical order.
■ e. Revise the definition of *Free meal.*
■ f. In the definition of *Tier I day care home,* remove the word ''elementary'' in paragraph (b).

The revisions and addition read as follows:

§ 226.2 Definitions.

* * * * *

Documentation means:

(a)* * *

(4) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number; or

* * * * *

Eligible area means:

(a) For the purpose of determining the eligibility of at-risk afterschool care centers, the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals; or

(b) For the purpose of determining the tiering status of day care homes, the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price meals, or the area based on the most recent census data in which at least 50 percent of the children residing in the area are members of households that meet the income standards for free or reduced-price meals.

* * * * *

Foster child means a child who is formally placed by a court or a State child welfare agency, as defined in § 245.2 of this chapter.

Free meal means a meal served under the Program to:

(a) A participant from a family which meets the income standards for free school meals, or

(b) A foster child, or

(c) A child who is automatically eligible for free meals by virtue of SNAP, FDPIR, or TANF benefits, or

(d) A child who is a Head Start participant, or

(e) A child who is receiving temporary housing and meal services from an approved emergency shelter, or

(f) A child participating in an approved at-risk afterschool care program, or

(g) An adult participant who is automatically eligible for free meals by virtue of SNAP or FDPIR benefits, or

(h) An adult who is an SSI or Medicaid participant.

* * * * *

§ 226.4 [Amended]

■ 25. In § 226.4, remove the word ''eligibilty'' each time it appears in paragraph (b) and add, in its place, the word ''eligibility''.

■ 26. In § 226.6:
■ a. Revise paragraph (b)(4)(i).
■ b. Remove paragraphs (b)(4)(ii) and (b)(4)(iii).
■ c. Redesignate paragraphs (b)(4)(iv) and (b)(4)(v) as paragraphs (b)(4)(ii) and (b)(4)(iii) respectively.
■ d. In paragraph (c)(2)(iii)(A)(*5*), remove the parenthetical phrase ''(if the State agency has temporarily extended the agreement pursuant to paragraph (c)(2)(iii)(D) of this section)''.
■ e. In paragraph (c)(2)(iii)(A)(*6*), remove the word ''instituion's'' and add in its place the word ''institution's''.
■ f. In paragraph (c)(2)(iii)(C)(*1*), remove the words ''temporarily-extended''.
■ g. Remove paragraph (c)(2)(iii)(D).
■ h. Redesignate paragraph (c)(2)(iii)(E) as paragraph (c)(2)(iii)(D).
■ i. In redesignated paragraph (c)(2)(iii)(D)(*1*), remove the words ''temporarily-extended''.
■ j. In paragraph (d)(3)(iv)(C), remove the word ''range'' and add, in its place the word ''ranges''.
■ k. In paragraph (f)(1)(viii)(A), remove the word ''elementary'' each time it appears.
■ l. In paragraph (f)(1)(ix)(A), remove the words ''elementary, middle, and high'' each time they appear.
■ m. In paragraph (f)(3)(i), remove the word ''elementary''.
■ n. In paragraph (f)(3)(iv)(C), remove the term ''§ 226.16(a)'' and add, in its place, the term ''§ 226.15(a)''.

The revision reads as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(4) * * *

(i) The State agency must require each institution that has been approved for participation in the Program to enter into a permanent agreement governing the rights and responsibilities of each party. The existence of a valid permanent agreement, however, does not eliminate the need for an institution to comply with the reapplication and related provisions at paragraphs (b) and (f) of this section; nor does it limit the State agency's ability to terminate the agreement as provided under paragraph (c) of this section.

* * * * *

§ 226.15 [Amended]

■ 27. In § 226.15:
■ a. In paragraph (e)(3), remove the word ''elementary''.
■ b. In paragraph (f), remove the word ''elementary'' each time it appears, and then, before the word ''school's'' in the fifth sentence, remove the word ''an'' and add, in its place, the word ''a''.

§ 226.16 [Amended]

■ 28. In § 226.16, remove the second sentence in paragraph (f).

§ 226.17 [Amended]

■ 29. In § 226.17(b)(4), remove the second period at the end of the third sentence.

§ 226.17a [Amended]

■ 30. In § 226.17a:
■ a. In paragraph (f)(2), remove the words ''an agreement or amend an existing'' and add, in their place, the words ''a permanent'', and then, remove the last sentence.
■ b. In paragraph (i)(1), remove the words ''an elementary, middle, or high school'' and add, in their place, the words ''a school''.

■ 31. In § 226.23:
■ a. Revise the second sentence of paragraph (c)(2).
■ b. Revise the fifth sentence of paragraph (d).
■ c. Revise the last sentence of paragraph (e)(1)(i).
■ d. Revise paragraph (e)(1)(ii)(C).
■ e. Remove paragraph (e)(1)(ii)(E).
■ f. Redesignate paragraphs (e)(1)(ii)(F) and (e)(1)(ii)(G) as paragraphs (e)(1)(ii)(E) and (e)(1)(ii)(F) respectively.
■ g. Revise redesignated paragraph (e)(1)(ii)(E).
■ h. Revise paragraph (e)(1)(iii)(C).
■ i. Revise paragraph (e)(1)(iii)(E).
■ j. In the introductory text of paragraph (e)(1)(iv), remove the word ''0members '' in the third sentence and add, in its place, the word ''members''.
■ k. In paragraph (e)(1)(iv)(A), remove the words '' food stamp'' and add, in their place, the term ''SNAP''.
■ l. Remove paragraph (e)(2)(vi).
■ m. Redesignate paragraph (e)(2)(vii) as paragraph (e)(2)(vi).
■ n. In redesignated paragraphs (e)(2)(vi)(A) and (B), remove the words ''Food Stamp'' each time they appear and add, in their place, the term ''SNAP''.
■ o. Remove the last two sentences of paragraph (h)(2)(iii).

■ p. Remove paragraphs (h)(2)(iii)(A) through (h)(2)(iii)(E).
■ q. In paragraph (h)(2)(v)(A), remove the words ''Food Stamp'' each time they appear and add, in their place, the term ''SNAP''.
■ r. In paragraphs (k)(1) and (k)(2), remove the term ''Privacy Act notice/''.

The revisions read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(c) * * *

(2) * * * These methods will ensure that applications are accepted from households on behalf of a foster child and children who receive SNAP, FDPIR, or TANF assistance, or for adult participants who receive SNAP, FDPIR, SSI, or Medicaid assistance;

* * * * *

(d) * * * The release issued by child care institutions shall also announce that a foster child, or a child who is a member of a household receiving SNAP, FDPIR, or TANF assistance, or a Head Start participant is automatically eligible to receive free meal benefits.

* * *

(e) * * *

(1) * * *

(i) * * * Furthermore, such forms and materials distributed by child care institutions shall state that a foster child is automatically eligible to receive free Program meal benefits, and a child who is a Head Start participant is automatically eligible to receive free Program meal benefits, subject to submission by Head Start officials of a Head Start statement of income eligibility or income eligibility documentation.

(ii) * * *

(C) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number.

* * * * *

(E) A statement which includes substantially the following information:

(*1*) ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve the participant for free or reduced-price meals. You must include the last four digits of the Social Security Number of the adult household member who signs the application. The last four digits of the Social Security Number are not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for the participant or other (FDPIR) identifier or when you indicate that the adult household member signing the application does not have a Social Security Number. We will use your information to determine if the participant is eligible for free or reduced-price meals, and for administration and enforcement of the Program.''

(*2*) When either the State agency or the child care institution plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (k) of this section, must be added to this statement; and

* * * * *

(iii) * * *

(C) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number.

* * * * *

(E) A statement which includes substantially the following information: ''The Richard B. Russell National School Lunch Act requires the information on this meal benefit form. You do not have to give the information, but if you do not, we cannot approve the participant for free or reduced-price meals. You must include the last four digits of the social security number of all adult household members, including the adult day care participant. The last four digits of the social security number are not required when you list a Supplemental Nutrition Assistance Program (SNAP), Food Distribution Program on Indian Reservations (FDPIR) or other FDPIR identifier, SSI or Medicaid case number for the participant receiving meal benefits or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if the participant is eligible for free or reduced-price meals, and for administration and enforcement of the CACFP;'' and

* * * * *

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED-PRICE MEALS AND FREE MILK IN SCHOOLS

■ 31. The authority citation for part 245 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 32. In § 245.2:
■ a. In the definitions of *Categorically eligible* and *Direct certification,* add the words ''*Foster child,* a'' before the word ''*Homeless''.*
■ b. In the definition of *Documentation,* revise paragraphs (1)(i) and (2)(ii) and the first and third sentences of paragraph (2)(iv).
■ c. Add a new definition of *Foster child* in alphabetical order.

The addition and revisions read as follows:

§ 245.2 Definitions.

* * * * *

Documentation means:

(1) * * *

(i) For households applying on the basis of income and household size, names of all household members; income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income); the signature of an adult household member; and the last four digits of the social security number of the adult household member who signs the application or an indication that the adult does not possess a social security number; or

* * * * *

(2) * * *

(ii) A letter or other document provided to the household by the agency administering *FDPIR* or the *TANF* program, as defined in this section or by the court, entity, or official authorized to administer an eligible program for a *Foster child,* a *Homeless child,* a *Migrant child,* a *Head Start child,* or a *Runaway child* as defined in this section.

* * * * *

(iv) Information obtained from an official responsible for determining if a child is a *Foster child,* a *Homeless child,* a *Migrant child,* a *Head Start child,* or a *Runaway child,* as defined in the section. * * * Documentation may also be a list of children, a computer match, or a court document that includes this information.

* * * * *

Foster child means a child who is formally placed by a court or an agency that administers a State plan under parts B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.). It does not include a child in an informal arrangement that may exist outside of State or court based systems.

* * * * *

■ 33. In § 245.5:
■ a. Remove paragraph (a)(1)(viii).
■ b. Redesignate paragraphs (a)(1)(ix) through (a)(1)(xii) as paragraphs

(a)(1)(viii) through (a)(1)(xi) respectively.

■ c. In redesignated paragraph (a)(1)(viii), remove ''and'' from the end of the sentence.

■ d. In redesignated paragraph (a)(1)(ix), remove the period and add, in its place, a semicolon.

■ e. Revise redesignated paragraph (a)(1)(ix).

The revision reads as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) * * *

(ix) An explanation that Head Start enrollees and foster, homeless, migrant, and runaway children, as defined in § 245.2, are categorically eligible for free meals and free milk and their families should contact the school for more information;

* * * * *

■ 34. In § 245.6:

■ a. Remove the last sentence in paragraph (a)(1).

■ b. In paragraph (a)(6), in the second sentence, after the words ''In addition,'' add the words ''the last four digits of''.

■ c. Revise paragraph (a)(8).

■ d. In paragraph (b)(2), remove the words ''*Migrant child, a homeless''* and add, in their place, the words ''*Foster child,* a *Homeless child,* a *Migrant''.*

■ e. In paragraph (b)(4), remove the words ''homeless, migrant,'' and add, in their place the words ''foster, homeless, migrant, or''.

■ f. Revise paragraph (b)(5)(iii).

■ g. In paragraph (b)(6)(ii), add a new sentence at the beginning of the paragraph.

■ h. Revise paragraph (b)(8).

■ i. In the heading of paragraph (c)(5)(ii), remove the words ''Homeless, migrant,'' and add in their place the words ''Foster, homeless, migrant, and''.

■ j. In paragraphs (h)(1) and (h)(2), remove the term ''Privacy Act notice/''.

The revisions and addition read as follows:

§ 245.6 Application, eligibility and certification of children for free and reduced-price meals and free milk.

(a) * * *

(8) *Required statements for the application.* (i) The application and descriptive materials must include substantially the following statements:

(A) ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced-price meals. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced-price meals, and for administration and enforcement of the lunch and breakfast programs. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, auditors for program reviews, and law enforcement officials to help them look into violations of program rules.''

(B) ''Foster, migrant, homeless, and runaway children, and children enrolled in a Head Start program are categorically eligible for free meals and free milk. If you are completing an application for these children, contact the school for more information.''

(ii) When either the State agency or the local educational agency plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (h) of this section, must be added to this statement. State agencies and local educational agencies are responsible for drafting the appropriate statement.

* * * * *

(b) * * *

(5) * * *

(iii) Individual notices from officials of eligible programs for a *Foster child,* a *Homeless child,* a *Migrant child,* a *Runaway child,* or a *Head Start child,* as defined in § 245.2, may continue to be used. These notices are provided to school officials who must certify these children as eligible for free meals or free milk, as applicable, without further application, upon receipt of such notice.

(6) * * *

(ii) For a *Foster child,* as defined in § 245.2, an official document indicating the status of the child as a foster child from an appropriate State or local agency or a court where the foster child received placement may provide appropriate documentation. * * *

* * * * *

(8) *Foster, Homeless, Migrant, Runaway, or Head Start Children.* To be categorically eligible as a Foster child, a Homeless child, a Migrant child, a Runaway child, or a Head Start child, the child's individual eligibility or participation for these programs shall be established. Categorical eligibility based on these programs shall not be extended to other children in the household.

* * * * *

■ 35. In § 245.6a:

■ a. Revise paragraph (a)(7)(iii).

■ b. In paragraph (c)(2), revise the third sentence.

■ c. Revise paragraph (f)(1).

■ d. In paragraph (f)(3), remove the words ''Food Stamp'' and ''Food Stamp Program'' wherever they appear, and add, in their place, the term ''SNAP''.

The revisions read as follows:

§ 245.6a Verification requirements.

(a) * * *

(7) * * *

(iii) Agency records to which the State agency or local educational agency may have access are not considered collateral contacts. Information concerning income, household size, or SNAP, FDPIR, or TANF eligibility, maintained by other government agencies to which the State agency, the local educational agency, or school can legally gain access, may be used to confirm a household's income, size, or receipt of benefits. Information may also be obtained from individuals or agencies serving foster, homeless, migrant, or runaway children, as defined in § 245.2. Agency records may be used for verification conducted after the household has been notified of its selection for verification or for the direct verification procedures in paragraph (g) of this section.

* * * * *

(c) * * *

(2) * * * Verification of eligibility is not required of households if all children in the household are determined eligible based on documentation provided by the State or local agency responsible for the administration of the SNAP, FDPIR or TANF or if all children in the household are determined to be foster, homeless, migrant, or runaway, as defined in § 245.2.* * *

* * * * *

(f) Verification procedures and assistance for households—(1) *Notification of selection.* Other than households verified through the direct verification process in paragraph (g) of this section, households selected for verification must be notified in writing that their applications were selected for verification. The written statement must include a telephone number for assistance as required in paragraph (f)(5) of this section. Any communications with households concerning verification

must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. These households must be advised of the type of information or documents the school accepts. Households selected for verification must be informed that:

(i) They are required to submit the requested information to verify eligibility for free or reduced-price meals, by the date determined by the local educational agency.

(ii) They may, instead, submit proof that the children receive SNAP, FDPIR, or TANF assistance, as explained in paragraph (f)(3) of this section.

(iii) They may, instead, request that the local educational agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway, as defined in § 245.2.

(iv) Failure to cooperate with verification efforts will result in the termination of benefits.

* * * * *

Dated: February 4, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–04116 Filed 2–27–13; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0008]

RIN 0563–AC35

Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will apply for the 2014 and succeeding crop years. Policyholders are hereby given notice that 2013 will be the last year coverage will be available under the old Pecan Revenue Crop Provisions. The Pecan Revenue Special Provisions will modify the Pecan Revenue Crop Provisions for the 2013 crop year by changing the definition of two-year coverage module to one crop year. This change through the Special Provisions will be applicable to policyholders beginning the first year of a two-year coverage module in the 2013 crop year. All producers who choose to purchase coverage on pecan acreage for the 2014 crop year will begin a new two-year coverage module under the terms and conditions of the revised Pecan Revenue Crop Provisions. Requiring all producers to start a new two-year coverage module for the 2014 crop year under the terms of the revised Pecan Revenue Crop Provisions will provide equitable treatment of pecan producers by allowing all pecan producers to be eligible for the same benefits beginning in the 2014 crop year and will simplify the administration of the transition to the modified program.

DATES: This rule is effective April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO, 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

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

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Pecan Revenue Crop Insurance Provisions (7 CFR 457.167) that were published by FCIC on November 17, 2011, as a notice of proposed rulemaking in the **Federal Register** at 76 FR 71276–71280. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 50 comments were received from 3 commenters. The commenters were an insurance provider, an insurance service organization, and a producer organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter stated they support the proposed regulation.

Response: FCIC thanks the commenter for their review of the proposed rule and their support.

Comment: A few commenters stated they have no objection to replacing the ''lowest available dollar span'' with the ''T-Revenue'' (to be developed by FCIC to represent a similar value according to the background information in the proposed rule) throughout the Crop Provisions in order to ''facilitate the implementation of a continuous rating methodology to be consistent with other policies.''

Response: FCIC thanks the commenters for their review and support of this proposed change.

Comment: A commenter requested the Special Provisions be amended to reflect an April 1st acreage and production reporting date. The commenter stated that it is not uncommon for groves and leases to change control during the month of March. This change would eliminate a portion of those groves that are lost after acreage reporting time each year leaving the insured to pay full premiums for coverage on orchards for which they no longer have insurance. The transfer of indemnity is an option, but rarely used by producers. Having cared for the grove and invested time, money, and labor in the prior years improving the grove, the producer is left without any benefit of the current year's crop and without any benefit of the crop insurance for which he must pay full price. If it is not feasible to implement some form of pro-rating of the premium (even if limited to the first 90 days after the current reporting date) then we suggest a later acreage reporting date may be more suitable and beneficial to the insured.

Response: The Crop Provisions require production and gross sales from the previous two crop years to be reported by the acreage reporting date for the first year of the two-year coverage module. Acreage reporting dates are located in the actuarial documents, and therefore, are not changed through the Crop Provisions. However, FCIC is consolidating acreage reporting dates because of the Acreage Crop and Reporting Streamlining Initiative (ACRSI) project, which has an objective of using common standardized data and terminology across USDA agencies to consolidate and simplify reporting requirements for farmers. As a result of the ACRSI project the acreage reporting date for pecans has been moved to March 15 in the states of Alabama, Arizona, Florida, Georgia, and Mississippi for the 2013 crop year. Additionally, for the 2013 crop year the acreage reporting date for pecans has been moved to May 15 in the states of New Mexico, Oklahoma, and Texas. This will allow additional time for producers to make their decisions regarding their groves, but for the purposes of consistency FCIC could not move the acreage reporting dates to April 1.

Section 1—Definitions

Comment: In regard to the definition of ''approved average revenue per acre'' a few commenters stated according to the background information in the proposed rule, the proposed change from a ten-year base period to a six-year base period is based on a recommendation from a contracted study that found a shorter base period works at least as well and ''will be more responsive to market trends and changes in the productive capacity of the trees.'' The background information also indicates that the six-year base period is ''better for predicting actual yields for some perennial crops.'' The commenters questioned whether this applies to the crop of pecans as this was not specifically indicated in the background information.

Response: FCIC agrees the background information in the proposed rule does not indicate the referenced study applies specifically to pecans. The report produced from the study did not specify which perennial crops were analyzed to determine the effect of a shorter base period. However, the concept is the same for pecans as it is for any other perennial crop because it is based on the premise that the productive capacity of a tree changes over time. The productive capacity of a tree generally increases over time until the tree reaches a maximum productive capacity and then production begins to decline. However, events can occur during the life of a tree that can change the productive capacity of that tree. Because the productive capacity of a tree changes over time, the most recent few years of production data provides the best indication of the current productive capacity of a tree. This means that a shorter base period will be more responsive to changes in the productive capacity of a perennial crop than a longer base period. While the Pecan Revenue program uses the revenue history to determine the guarantee rather than production history, the production history is part of the revenue history. Although there are other forces that can affect revenue, the production capability of the trees is an important factor in establishing the revenue.

Comment: A few commenters stated that according to the definition of ''approved average revenue per acre,''

the average of the four or six years of sales records and/or T-revenue is subject to no adjustments before becoming the ''approved average revenue per acre.'' The commenters question if this is correct.

Response: FCIC disagrees the ''approved average revenue per acre'' is not subject to adjustments. Although, the definition of ''approved average revenue per acre'' does not indicate the adjustments, the ''approved average revenue per acre'' may be adjusted in accordance with the terms of the Crop Provisions. Sections 3(d) and 3(f)(2) provide exceptions that allow the amount of insurance per acre to be adjusted within the two-year coverage module. No change has been made to the final rule.

Comment: A few commenters suggested rewording the definition of ''approved average revenue per acre'' to read, ''The total of your average gross sales per acre based on the most recent consecutive four or six years of sales records and dividing that result by the number of years of average gross sales per acre.''

Response: FCIC disagrees with the commenters that this section should be reworded. The suggested rewording could change the meaning of the definition to allow a choice of either four or six years of sales records to be used to calculate the ''approved average revenue per acre'' regardless of the number of years of sales records in the database. This differs from the proposed provision that requires four year of sales records to be used in the calculation unless six years of sales records are available. If six years of sales records are available six years must be used in the calculation. Therefore, the first sentence of the definition ''approved average revenue per acre'' cannot be revised as suggested. No change has been made to the final rule.

Comment: A few commenters concurred with the proposed deletion of the pecan-specific definition of ''enterprise unit'' since it was essentially the same as the definition in the Basic Provisions, which as noted in the background information in the proposed rule, includes a reference to meeting the requirements of section 34 of the Basic Provisions. The commenters stated if optional units are not added, then a modified version of this definition may need to be retained.

Response: FCIC thanks the commenters for their review and support of this proposed removal of the definition of ''enterprise unit.'' Although FCIC agrees the requirements to qualify for enterprise units should be consistent with the requirements in the Basic Provisions, the Basic Provisions do not provide requirements to qualify for enterprise units when non-contiguous land is the basis for optional units. Therefore, FCIC has revised section 2(a)(1) to state that requirements to qualify for enterprise units will be based on the producer having two or more parcels that meet the definition of non-contiguous land and two or more parcels must have at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit.

Section 2—Unit Division

Comment: A few commenters stated that the proposed Crop Provisions are not entirely clear on how optional units will be handled within the two-year coverage module. The provisions in sections 2(a), 2(a)(3)(ii), 2(a)(3)(iii), and 3(d)(1) seem somewhat contradictory. The section 2(a) lead-in [''For both years of the two-year coverage module a unit will be:''] to 2(a)(3) indicates that if the insured qualifies for optional units for the first year of a two-year coverage module, the same optional unit structure would apply for both years of that module regardless of what happens during that module. Section 2(a)(3)(ii) requires that ''Separate records of production are provided for at least the most recent consecutive two crop years'' to qualify for optional units for the current two-year coverage module, which fits the definition of ''two-year coverage module'' that the same coverage applies for both years of the module. Section 2(a)(3)(iii) also states that optional units will be established ''by the acreage reporting date of the first year of the two-year coverage module'' but goes on to indicate that ''Units * * * may be adjusted or combined to reflect the actual unit structure when adjusting a loss.'' The commenters questioned if this means that a Pecan Revenue policy could have optional units for the first year of the module, but then have those units combined into basic units the second year of the module if it is discovered at loss time that the production was commingled (meaning the units are not the same for both years of the module). Or would that discovery result in the retroactive combining of optional units for the first year of the module as well, even if separate records by optional unit were maintained that first year? If so, this would present a number of difficulties. Section 3(d)(1) states that failure to provide acceptable records for optional units ''will result in optional units being combined into basic units at the time of discovery and your amount of insurance per acre will be recalculated for the two-year coverage module.'' The commenters stated, this would seem to indicate that the unit structure would be revised retroactively to the first year of the module (unless it is referring only to the recalculation of the amount of insurance), except that the lead-in from 3(d) is that ''Your amount of insurance per acre will remain the same * * * for each year of the two-year coverage module unless.'' The word ''unless'' would indicate that the situation described in 3(d)(1) is one of the exceptions where the policy terms and coverage are not the same for both years of the coverage module.

Response: FCIC agrees the lead-in paragraph for section 2(a) appears to create a conflict with sections 2(a)(3)(iii) and 3(d)(1) by stipulating the unit structure will be the same for both years of the two-year coverage module. The provisions in sections 2(a)(3)(iii), 3(d)(1) and 13(b)(1) provide exceptions to the general rule that the unit structure will remain the same for both years of the two-year coverage module. Therefore, FCIC has revised section 2(a) by adding the phrase ''except as provided in these Crop Provisions'' to the beginning of the provision. The provisions in sections 2(a)(3)(iii), 3(d)(1), and 13(b)(1) are intended to require an adjustment to the unit structure and amount of insurance for the current crop year and for the subsequent crop year of the two-year coverage module (provided another crop year remains in the two-year coverage module), if it is discovered that separate acceptable records were not maintained for optional units. The provisions in sections 2(a)(3)(iii), 3(d)(1), and 13(b)(1) are not intended to require the unit structure or amount of insurance to be revised retroactively for the first year of the two-year coverage module if separate acceptable records for optional units were maintained in the first year of the module, but not for the second year of the two-year coverage module. The provision in section 3(d)(1) has been revised to clarify that if you fail to provide acceptable records necessary to determine a loss for optional units, optional units will be combined to reflect the actual unit structure at the time of discovery and your amount of insurance per acre will be recalculated for the current crop year and the subsequent crop year of the two-year coverage module (provided another crop year remains in the two-year coverage module). The provision in section 13(b)(1) has been revised to clarify that if it is discovered at the time of loss that separate acceptable records were not maintained for optional units, the actual unit structure determined at the time of loss will be the unit structure for the

current crop year and the subsequent crop year of the two-year coverage module (provided another crop year remains in the two-year coverage module).

Comment: A few commenters stated that if the new optional unit provisions are implemented, consider consolidating 2(a)(3) and 2(b) since both deal with optional units as available for Pecan Revenue.

Response: FCIC agrees 2(a)(3) and 2(b) should be combined since they both are in lieu of provisions contained in section 34 of the Basic Provisions. FCIC has revised section 2(a)(3) to state that the provisions are in lieu of sections 34(b) and (c) of the Basic Provisions. With this revision to section 2(a)(3), the provision in section 2(b) is not necessary because provisions that allow optional units by section, section equivalent, FSA farm serial number, and irrigated, non-irrigated and organic farming practice are contained in section 34(c) of the Basic Provisions. FCIC has revised the provisions and redesignated the subsections accordingly.

Comment: A few commenters stated that according to the background information in the proposed rule, the proposed change to allow optional units by non-contiguous land was requested by producers and ''Premium rates will be adjusted to compensate for any additional risk associated with optional units.'' The commenters stated the members (of their organization) they have heard from so far have objected to this proposed change and expressed concern with the consequences of allowing optional units for Pecan Revenue, and anticipate other insurance providers will feel the same. Based on past experience, keeping production records to maintain optional units for crops like pecans is very difficult. With crops like pecans, many of the producers are also processors. They are not going to shut down the processing plant to maintain option unit records. They are going to dump pecans into a big bin and keep running the shelling plant in such a manner that they lose their identity. Furthermore, current appraisal methods are inadequate for tracking production for purposes of optional units. Appraisals are more difficult for pecan orchards than for other crops because you can have producing and non-producing trees in the same orchard, depending on variety. Pecan trees also have varying maturity dates by variety which can be greatly affected by weather conditions. In addition, when harvesting pecans, the trees may have suffered weather stresses that result in harvesting three or more times per season so tracking the cleaned production back to an optional unit by appraisal is problematic. Optional units will have a negative effect on the program experience for this crop program. The experience has been favorable in recent years primarily as a result of the high prices since many orchards have had low yields. However, tracking production back to optional units will be extremely difficult and likely result in adverse program experience.

Response: FCIC understands the concerns of the commenters that allowing optional units by non-contiguous land will result in a negative effect on program experience because of the difficulty of maintaining separate production records. However, the problems cited mostly involve the producer's ability to meet the requirements of maintaining separate records for each optional unit. Those producers who are unable to maintain separate records should not elect optional units. Further, the problems discussed are no different than for other perennial crops that allow optional units. Producers who choose to elect optional units are certifying they can provide acceptable separate records for optional units. Provisions have been added to require optional units to be combined and the amount of insurance to be recalculated if the producer cannot provide separate production records. In addition, premium rates will be adjusted to reflect any additional risk caused by offering optional units. Those producers not electing optional units will not be subject to any rate increases for the additional risk posed by optional units. No change has been made to the final rule.

Comment: A few commenters stated they currently have pecans set up on a single database for irrigated versus non-irrigated on a county basis. If optional units are added, guidelines will need to be provided as to how records should be split out if a producer wants to elect optional units. The commenters ask whether FCIC will want insurance providers to maintain separate optional unit databases within the basic unit/enterprise unit structures like what is now being required in the 2012 Crop Insurance Handbook since this would now be an option under these provisions.

Response: To qualify for optional units producers will have to be able to provide production records for each optional unit from at least the most recent consecutive two crop years. Separate databases will have to be established for each optional unit. Additionally, producers will be required to maintain separate records for the irrigated and non-irrigated acreage within the optional units. FCIC will provide additional guidance in the Crop Insurance Handbook as to how databases should be established and maintained.

Section 3—Insurance Guarantees and Coverage Levels for Determining Indemnities

Comment: A few commenters stated to consider revising section 3(a) by rearranging the phrases in the second sentence to read, ''You may change the coverage level for the succeeding two-year coverage module by giving us written notice not later than the sales closing date of the next two-year coverage module.''

Response: No changes were proposed to section 3(a) and the proposed change does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not provided an opportunity to comment on the requested change. No change has been made to the final rule.

Comment: A few commenters stated if section 3(d)(1) is not an exception where the unit structure might be different the first and second years of the module, perhaps this should be added instead to section 3(f), which also deals with whether the insured does or does not report the gross sales timely.

Response: FCIC disagrees the provision in section 3(d)(1) should be moved to section 3(f). As stated above, FCIC has revised section 2(a) to make it clear that section 3(d)(1) is an exception to section 2(a). Therefore, this provision has not been moved.

Comment: A few commenters stated if optional units are added to the Pecan Revenue policy, perhaps some reference should be added to section 3(f)(1) to address the effect on optional units if the insured does not report gross sales timely (besides having an assigned gross sales amount). In order to be consistent with other crop programs, producers would not be eligible for optional units if the most recent previous two years of gross sales were not reported.

Response: FCIC agrees with the commenters. A statement has been added to section 3(f)(1) to clarify that if producers do not report the gross sales from the two previous years by the acreage reporting date for the first year of the next two-year coverage module, they will not be eligible for optional units for both years of the two-year coverage module.

Comment: A few commenters stated to consider revising section 3(f)(2) to

read ''we will readjust your average gross sales per acre for the next two-year coverage module'' instead of ''next crop year.''

Response: Although no changes were proposed to section 3(f)(2), the commenter has identified a potential conflict between the provisions in section 3(d) and section 3(f)(2). Section 3(d) states ''your amount of insurance per acre will remain the same as stated in the Summary of Coverage on each unit for each year of the two-year coverage module unless* * *'' but does not provide an exception to allow a revision to the approved average revenue per acre for failure to timely report gross sales. The provision in section 3(f)(2) states that ''if your gross sales are reported after the acreage reporting date for the two-year coverage module, we will readjust your average gross sales per acre for the next crop year.'' Therefore, to prevent a conflict between these provisions FCIC has revised section 3(d) by adding a new paragraph (4) that specifies the amount of insurance per acre remains the same for each year of the two-year coverage module unless the gross sales amount is assigned in accordance with section 3(f).

Section 6—Report of Acreage

Comment: A commenter stated there is a fair amount of overlap and/or repetition in 6(a)(1), 6(b), and 6(c).

Response: The only change proposed in section 6 was to remove the percentage associated with the reporting of sequential thinning. FCIC has not proposed any changes with respect to the rewriting of the section. There is no conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not provided an opportunity to comment. No change has been made to the final rule.

Section 8—Insured Crop

Comment: A few commenters stated the proposed change to section 8(d) would drop the minimum age requirement and make some revisions to the minimum production requirement of ''at least 600 pounds of pecan in-shell per acre (or an amount provided in the Special Provisions) in at least one of the previous four crop years, unless we inspect and allow insurance by written agreement.'' The commenters question under what circumstances the RMA Regional Office would consider insurance by written agreement for trees that have not produced at least 600 pounds per acre in at least one of the last four crop years. The commenters asked whether the intent is to consider exceptions in certain cases such as an orchard that has produced just under 600 pounds per acre, or met the minimum production requirement five years ago but not since.

Response: The RMA Regional Offices will determine eligibility for a written agreement. While it is not possible to list every possible situation that might warrant a written agreement, one such situation would be if an insurable cause of loss has caused the grove to fail to meet the minimum production requirement, but based on an inspection of the grove it is clearly capable of producing the minimum production requirement. This provision is not intended to allow exceptions to acreage that was not capable of meeting the minimum production requirement in at least one of the previous four years on a case by case basis.

Comment: A commenter requested clarification to section 8(e) in regard to types of pecan varieties as possibly being uninsurable or incompatible pollinators and the methodology for determining uninsurable or incompatible pollinators.

Response: The RMA Regional Office will use published research and loss experience data to determine what, if any, varieties or groups of varieties should be considered uninsurable because they are unreliable producers or incompatible pollinators. Any pecan varieties or groups of varieties determined to be uninsurable will be listed in a Special Provision statement. Producers should consult with the appropriate agricultural experts prior to planting pecan trees to ensure they are reliable producers and compatible pollinators.

Comment: A commenter stated the proposed section 8(d) would eliminate the need for the proposed new section 8(e) as any acreage not meeting the minimum level of production would already be considered uninsurable.

Response: FCIC disagrees the addition of the new section 8(d) eliminates the need for the new section 8(e). The provision in section 8(d) makes acreage not capable of producing the minimum production requirement ineligible for crop insurance coverage. This may simply be a function of the age of the trees, not the variety, and planting younger trees may allow the acreage to again be insurable. However, there may be certain varieties or groups of varieties that are not capable of producing the minimum production or may only be capable of occasionally producing the minimum production requirement. For these varieties or groups of varieties it may be necessary to exclude these from being insurable. For instance, it is possible a variety may be determined to be uninsurable if it is severely alternate bearing even under proper management or has characteristics which make it unsuitable for commercial production. No change has been made to the final rule.

Section 13—Settlement of Claim

Comment: A commenter stated the background information in the proposed rule states ''FCIC intends to provide additional guidance in the Pecan Revenue Loss Adjustment Standards Handbook (LASH) as to when a price should be considered inappropriate. The guidance will create a minimum threshold that the price received must meet and will be based on a percentage of the AMS price.'' The commenter questioned whether it is sufficient to have that information in the LASH, or should some indication of that minimum threshold be included in the Crop Provisions.

Response: FCIC agrees it would not be appropriate to add a minimum threshold to the Pecan Revenue LASH without providing an indication of the minimum threshold in the Pecan Revenue Crop Provisions. Therefore, FCIC has revised section 13(d)(2)(i) to indicate that unless otherwise provided in the Special Provisions and excluding pecans sold under contract, the price received will be not less than 95 percent of the lowest AMS price for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week the producer sells his or her pecans. If AMS prices are not published for the week the pecans were sold, the price received will be not less than 95 percent of the lowest price per pound for in-shell pecans of the same variety or varieties insured offered by buyers in the area in which the producer normally markets the pecans on the day the producer sells his or her pecans. Additionally, FCIC has amended the proposed provision to indicate that the market price will be used for direct marketed pecans in order to be consistent with section 10(d)(1).

Section 15—Substitution of Yields

Comment: A commenter suggested revising section 15 to include that the substitution of yields provisions of the Basic Provisions are applicable (with the substitution of T-Revenue in lieu of the T-Yield). The commenter stated this change would give the insured the same protection as other crops by allowing an insured to substitute 60 percent of the applicable T-Revenue for actual revenue in order to mitigate effect of catastrophic years. With other crops, if a producer experiences a disaster and has an extremely low yield, that producer has

the option of substituting 60 percent of the T-yield for the one actual yield to minimize the effect of that year on the approved production history. This is not an option for pecan producers. If a disaster occurs and causes a producer to have zero production, the insured's summary of revenue history and their approved average revenue are dramatically impacted. With this one simple change to the policy provisions, the needs of the producer are better met and the policy will be more similar to other crop provisions.

Response: No changes were proposed to the Substitution of Yields section and the proposed change does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public has not been provided an opportunity to comment of the requested change. No change has been made to the final rule.

In addition to the changes described above, FCIC has made minor editorial changes.

List of Subjects in 7 CFR Part 457

Crop insurance, Pecan Revenue, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2014 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.167 as follows:
■ a. In the introductory text by removing ''2005'' and adding ''2014'' in its place;
■ b. In section 1 by:
■ i. Revising the definitions of ''approved average revenue per acre'' and ''average gross sales per acre'';
■ ii. In the definition of ''direct marketing'' by adding the word ''a'' before the word ''wholesaler'';
■ iii. Removing the definition of ''enterprise unit'';
■ iv. Revising the definition of ''market price''; and
■ v. Removing the definition of ''set out''; and
■ vi. Adding in alphabetical order a definition of ''transitional revenue (T-revenue)'';
■ c. Revise section 2;
■ d. In the introductory text of section 3 by adding a comma following the phrase ''In lieu of section 3 of the Basic Provisions'';
■ e. Revise section 3(d)(1);
■ f. In section 3(d)(2) by removing the phrase ''lowest available dollar span amount provided in the actuarial documents'' and adding the term ''T-revenue'' in its place;
■ g. Add section 3(d)(4);
■ h. Revise section 3(f)(1);
■ i. In section 3(h) by adding a hyphen between the words ''high'' and ''risk'' in all four instances they appear;
■ j. In section 4(b) by removing the phrase ''the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site'' and adding the phrase ''RMA's Web site'' in its place;
■ k. In section 4(d) by adding a sentence;
■ l. In section 6(a)(1) by removing the phrase ''in excess of 12.5 percent of your insured acreage'';
■ m. In section 6(a)(5) by removing the semicolon and adding a period in its place;
■ n. In section 6(b) by removing the phrase ''in excess of 12.5 percent of your insured acreage'';
■ o. In section 8 by:
■ i. Revising paragraph (d);
■ ii. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g); and
■ iii. Adding a new paragraph (e);
■ p. In section 11(a)(2) by adding a comma after the term ''Fire'';
■ q. Revise section 13(b);
■ r. In section 13(d)(1)(i) introductory text by removing the semicolon at the end of the sentence and adding a colon in its place;
■ s. Revise section 13(d)(2)(i); and
■ t. Revise the pecan revenue example at the end of section 13.

The revisions and additions read as follows:

§ 457.167 Pecan revenue crop insurance provisions.

* * * * *

1. * * *

Approved average revenue per acre. The total of your average gross sales per acre based on the most recent consecutive four years of sales records building to six years and dividing that result by the number of years of average gross sales per acre. If you provide more than four years of sales records, they must be the most recent consecutive six years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

(1) The average of the two most recent consecutive years of your gross sales per acre and two years of the T-revenue; or

(2) If you do not provide any gross sales records, the T-revenue.

Average gross sales per acre. Your gross sales of pecans for a crop year divided by your net acres of pecans grown during that crop year. For example, if for the crop year your gross sales were $100,000 and your net acres of pecans were 100, then your average gross sales per acre for the crop year would be $1,000.

* * * * *

Market price. The market price is:

(1) The average of the AMS prices for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week you sell any of your pecans, you harvest your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, unless otherwise provided in the Special Provisions. For example, if you harvest production on November 14 but do not sell the production, the average of the AMS prices for the week containing November 14 will be used to determine the market price for the production harvested on November 14; or

(2) If AMS prices are not published for the week, the average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers on the day you sell any of your pecans, you harvest any of your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, in the area in which you normally market the pecans (If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by buyers nearest to your area).

* * * * *

Transitional revenue (T-revenue). A value determined by FCIC and published in the actuarial documents.

* * * * *

2. Unit Division.

Except as provided in these Crop Provisions, for both years of the two-year coverage module a unit will be:

(a) In addition to the requirements of section 34(a)(4) of the Basic Provisions, an enterprise unit if the insured crop is located on at least two parcels of non-contiguous land and at least two of the parcels must contain at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit;

(b) A basic unit as defined in section 1 of the Basic Provisions; or

(c) In lieu of the requirements contained in sections 34(b) and (c) of the Basic Provisions, basic units may be divided into optional units if, for each optional unit, the following criteria are met:

(1) Each optional unit you select must be located on non-contiguous land;

(2) Separate records of production are provided for at least the most recent consecutive two crop years. The records will be used to verify that trees from each unit meet the minimum production requirement contained in section 8(d) and to establish the approved average revenue per acre for the optional units selected; and

(3) Optional units are selected and identified on the acreage report by the acreage reporting date of the first year of the two-year coverage module. Units will be determined when the acreage is reported, but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason.

3. * * *

(d) * * *

(1) You fail to provide acceptable records necessary to determine a loss for optional units. This will result in optional units being adjusted or combined to reflect the actual unit structure at the time of discovery. Your amount of insurance per acre will be recalculated for the current crop year and the subsequent crop year of the two-year coverage module (provided another year remains in the two-year coverage module).

* * * * *

(4) Your gross sales amount is assigned in accordance with section 3(f).

* * * * *

(f) * * *

(1) If you do not report your gross sales in accordance with this paragraph, we will assign a gross sales amount for any year you fail to report and you will not be eligible for optional units for both years of the two-year coverage module. The gross sales amount assigned by us will be not greater than the T-revenue for the current coverage module.

* * * * *

4. * * *

(d) * * * If available from us, you may elect to receive these documents and changes electronically.'' following the sentence, ''If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date.

8. * * *

(d) That are grown on trees that have produced at least 600 pounds of pecans in-shell per acre (or an amount provided in the Special Provisions) in at least one of the previous four crop years, unless we inspect and allow insurance by written agreement. This amount of production must be achieved subsequent to any top work that occurs within a unit;

(e) That are grown on varieties or a grouping of varieties within a unit that are not designated as uninsurable in the Special Provisions;

* * * * *

13. * * *

(b) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable records for any:

(1) Optional unit, we will combine all optional units for which such records were not provided and this will be the unit structure the current crop year and the subsequent crop year of the two-year coverage module (provided another year remains in the two-year coverage module); or

(2) Basic unit, we will allocate commingled production or revenue to each basic unit in proportion to our liability on the harvested acreage for each unit.

* * * * *

(d) * * *

(2) * * *

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the price received for each day the pecans were sold. (If the price received is not verifiable by sales receipts or if the pecan production was direct marketed, the market price will be used. Unless otherwise provided in the Special Provisions, and excluding pecans sold under contract, the price received will be not less than 95 percent of the lowest AMS price for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week you sell your pecans. If AMS prices are not published for the week the pecans were sold, the price received will be not less than 95 percent of the lowest price per pound for in-shell pecans of the same variety or varieties insured offered by buyers in the area you normally market the pecans or the area nearest to you if prices are not available in your immediate area on the day you sell your pecans.);

* * * * *

PECAN REVENUE EXAMPLE

Year	Acres	Average pounds per acre	Average gross sales per acre
4	100	750	$1,050
3	100	625	$625
2	100	1250	$750
1	100	200	$250

Total Average Gross Sales Per Acre = $2,675

The approved average revenue equals the total average gross sales per acre divided by the number of years ($2,675 ÷ 4 = $669).

The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ($669 × .65 = $435).

Assume pecan trees in the unit experienced damage to blooms due to a late freeze causing low production. You produced, harvested, and sold 300 pounds per acre of pecans from 70 acres and received an actual price of $0.75 per pound. On the other 30 acres, the pecans suffered damage due to drought. You elected not to harvest the other 30 acres of pecans. The 30 acres were appraised at 100 pounds per acre and on the day of the appraisal the average AMS price was $0.65. The total dollar value of production to count is (300 pounds of pecans × 70 net acres × $0.75) + (100 pounds × 30 net acres × $0.65) = $15,750 + $1,950 = $17,700.

The indemnity would be:

The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ($435 × 100 = $43,500.00 − $17,700.00 = $25,800).

* * * * *

Signed in Washington, DC, on February 19, 2013.

Brandon Willis,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2013–04468 Filed 2–27–13; 8:45 am]

BILLING CODE 3410–08–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE02

Chartering and Field of Membership Manual for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the definition of ''rural district'' in NCUA's Chartering and Field of Membership Manual. The amendment permits a geographic area to qualify as a rural district if, among other criteria, it has a total population that does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located. The current definition limits the rural district's population to 200,000 people without regard to the population of the state containing the majority of the rural district.

DATES: This rule is effective April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, or Elizabeth Wirick, Staff Attorney, Office of General Counsel, at (703) 518–6545, or Robert Leonard, Director, Division of Consumer Access, Office of Consumer Protection, at (703) 518–1140.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments
III. Regulatory Procedures

I. Background

A. Statutory Framework and the Proposed Rule

The Federal Credit Union Act (Act), as amended by the Credit Union Membership Access Act of 1998 (CUMAA), establishes requirements for membership in federal credit unions (FCUs). The Act provides that a community credit union is one organized around a ''well-defined local community, neighborhood, or rural district.''[1] In CUMAA, Congress specifically delegated to the Board the authority to define by regulation the meaning of ''well-defined local community'' (WDLC) and ''rural district'' for FCU charters.[2]

Since CUMAA's enactment, the agency has gained significant experience in determining the criteria that establish an area as a WDLC or rural district by analyzing and processing numerous applications for community charter conversions and expansions. With the benefit of this experience, the Board has determined that the current population limit of 200,000 people associated with establishing a rural district is too restrictive to fulfill the potential of that charter type and is limiting some FCUs' ability to serve members in rural areas. Accordingly, the Board issued a proposed rule in September 2012 to increase the population limit associated with rural districts.[3] Specifically, the proposed rule permitted a geographic area to qualify as a rural district if, among other criteria, it has a total population that does not exceed the greater of 200,000 people or three percent of the population of the state in which the majority of the district is located.

B. Final Rule

Among other criteria, the final rule permits an area to qualify as a rural district if its population does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located. As revised by the final rule, NCUA's Chartering and Field of Membership Manual[4] continues to include two alternative sets of criteria to establish a rural district. One set requires that the district have well-defined, contiguous boundaries and more than 50% of its population must reside in areas the U.S. Census Bureau designates as rural. The other set of criteria requires that the district have well-defined, contiguous boundaries and a population density of no more than 100 people per square mile. Under either set of criteria, the population of a rural district may not exceed the greater of 250,000 or three percent of the population of the state in which the majority of the district is located.

As with all community charters, FCUs serving rural districts must develop business and marketing plans that demonstrate how they will serve their entire community.

The practical effect of the revised definition is that it allows rural districts of up to 250,000 persons in all states, and, in the 11 most populous states, rural districts may exceed the 250,000 person limit.[5] Despite the focus on the population aspect of the definition of rural district, the other criteria in the definition not related to population remain in place and help ensure the definition as a whole does not exceed appropriate boundaries.

For FCUs seeking a rural district that includes portions of two or more states, the three percent state population component will be based on the population of the state containing the majority of the proposed rural district. The majority of a multi-state rural district will be based on population rather than geographic area. For example, if an FCU applies to serve a district with two geographically large counties and 100,000 residents in state A, plus one geographically small county and 200,000 residents in state B, the combined population of 300,000 could not exceed three percent of the population of state B.

C. How is the final rule different from the proposed rule?

The proposal would have allowed rural districts of up to 200,000 people or three percent of a state's population, whichever is greater. As discussed in more detail below, the final rule allows rural districts of up to 250,000 people or three percent of a state's population, whichever is greater.

II. Public Comments

NCUA received 16 comments on the proposal: three from trade associations, nine from state credit union leagues, and four from FCUs. Fourteen commenters supported the proposed rule but urged NCUA to make other changes to the definition of rural district so more FCUs could benefit. One commenter supported the proposal without additional suggestions. Only a banking trade association opposed the proposal.

The commenters who encouraged NCUA to make additional changes mostly expressed concern that the proposal would benefit only credit unions in the most populous states. Many commenters suggested that increasing the population limit for a rural district would enhance the availability of rural district-based community charters. Two commenters suggested using a population limit of 500,000 persons, and another two commenters suggested the population should be limited to the greater of 500,000 or four percent of a state's population. Six commenters stated the definition of rural district should be contiguous areas in a state with a total district population of less than 500,000. As discussed in the preamble to the proposed rule, NCUA is seeking a balance that permits rural districts to include a sufficient number of potential credit union members to make this a realistic chartering option in more areas, without permitting rural districts to become overly large.

The Board believes that many of the commenters have suggested population limits that would result in overly large rural districts. The Board's longstanding view is that a community charter should not encompass an entire state.[6] For example, the 500,000 member limit suggested by many of the commenters constitutes the majority of the population in seven states[7] and the

[1] 12 U.S.C. 1759(b)(3).

[2] 12 U.S.C. 1759(g).

[3] 77 FR 59137 (Sept. 26, 2012).

[4] NCUA has implemented the Act's field of membership requirements in its Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of NCUA's regulations. 12 CFR part 701, Appendix B. NCUA also publishes the manual as an Interpretative Ruling and Policy Statement (IRPS). The current version of the manual is set forth as IRPS 08–2, as amended by IRPS 10–1.

[5] With respect to the three percent of state population component, the amended definition will only affect FCUs seeking a rural district located in states with a population above approximately 8.83 million. This is because three percent of the population of states with fewer than 8.83 million people would already be less than the 250,000 person limit.

[6] 75 FR 36257 (June 25, 2010).

[7] These states are Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, and Wyoming.

District of Columbia. Accordingly, this suggested limit violates in principle the Board's position of restricting community charters to appropriate sizes. The 500,000 person limit also exceeds the balance the Board seeks between permitting rural districts to be large enough to be economically viable but not unreasonably or unnecessarily large taking into account the purpose of the rural district. Although the Board believes a 500,000 person population limit is too large, the Board agrees with commenters that an increase from the current 200,000 person limit is warranted. Accordingly, the Board has determined to increase the population limit for rural districts to the greater of 250,000 or three percent of the population of the state containing the rural district. Increasing the population limit to 250,000 will potentially benefit FCUs in all geographic locations, not only the 11 most populous states, but is not so drastic an increase to dilute the integrity of the purpose of rural districts. In other words, the Board believes this incremental increase to 250,000 reaches the balance discussed above.

The Board took into account similar considerations and applied a similar analysis in establishing the ''three percent of state population'' component in the definition. As noted in the preamble to the proposed rule, the Board is concerned that many rural districts are centered around a small hub city or town. When the population of the hub is included in the rural district's total population, it often can cause the total population to exceed the 250,000 person limit.[8] This is problematic because the inclusion of such hub cities or towns is often necessary for some rural districts to be economically viable. The addition of the three percent of state population component to the definition, as introduced in the proposed rule, potentially increases the size of a rural district.

In the discussion of the proposed rule, the Board also noted that FCUs in rural areas often have greater expenses to locate, join and serve members than FCUs whose membership is less geographically dispersed.[9] As a result, a higher potential population is required to ensure the economic viability of many rural district charters. The proposal would have offered the higher potential population limit only to FCUs in the most populous states. The final rule increases the population limit for all FCUs.

Commenters also offered a variety of suggested changes to other components of the definition of rural district. The current definition of rural district also requires that either: (1) more than 50% of the district's population resides in areas designated as rural by the U.S. Census Bureau; or (2) the proposed district has a population density of no more than 100 people per square mile. Five commenters queried whether the definition of rural district requires any component based on census tract data, and one commenter suggested the 100 person per square mile limit is too low. Several commenters also proposed alternatives for these criteria. The Board has carefully considered these suggestions but is not making any changes to the other, existing components of the definition.

Six commenters requested that existing rural district-based FCU charters be grandfathered, but also allowed to apply for an expanded area under any new definition adopted. The Board reiterates that FCUs with current rural district charters are grandfathered, and they are able to apply to amend their charters based on the adopted definition.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $50 million in assets).[10] This rule does not impose any requirements on small credit unions. NCUA has determined that this final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.[11] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that this rule does not impose a new information collection requirement or increase an existing burden.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This rule only applies to FCUs and will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[12]

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 [13] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[14] NCUA expects that the Office of Management and Budget will determine that the final rule is not a ''major rule'' for purposes of SBREFA.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 21, 2013.

Mary Rupp,

Secretary of the Board.

For the reasons set forth above, the National Credit Union Administration amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

[8] 77 FR 59137, 59138 (Sept. 26, 2012).

[9] *Id.*

[10] 5 U.S.C. 603(a).

[11] 44 U.S.C. 3507(d); 5 CFR part 1320.

[12] Public Law 105–277, 112 Stat. 2681 (1998).

[13] Public Law 104–121, 110 Stat. 857 (1996).

[14] 5 U.S.C. 551.

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.,* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

■ 2. Revise the fifth paragraph of Section V.A.2 of Chapter 2 of Appendix B to part 701 to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

Chapter 2

* * * * *

V.A.2—Definition of Well-Defined Local Community and Rural District

* * * * *

The rural district requirement is met if:

- Rural District—
- The district has well-defined, contiguous geographic boundaries;
- More than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United State Census Bureau; and
- The total population of the district does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located; *or*
- The district has well-defined, contiguous geographic boundaries;
- The district does not have a population density in excess of 100 people per square mile; and
- The total population of the district does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located.

* * * * *

[FR Doc. 2013–04647 Filed 2–27–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0421; Directorate Identifier 2012–NM–042–AD; Amendment 39–17284; AD 2012–25–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to certain The Boeing Company Model 757 airplanes. That AD incorrectly identified certain actions that are terminated in another AD. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective February 28, 2013. The effective date for AD 2012–25–03 (77 FR 73897, December 12, 2012) remains January 16, 2013.

ADDRESSES: 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: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@faa.gov.*

SUPPLEMENTARY INFORMATION: AD 2012–25–03, Amendment 39–17284 (77 FR 73897, December 12, 2012), currently requires repetitive inspections of electrical heat terminals on the left and right windshields for damage, and corrective actions if necessary; and allows replacing an affected windshield with a windshield equipped with different electrical connections, which would terminate the repetitive inspections for that windshield. For certain The Boeing Company Model 757 airplanes, AD 2012–25–03 also specifies that accomplishing the required actions terminates certain requirements of AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), for that airplane only.

As published, paragraph (l) of AD 2012–25–03, Amendment 39–17284 (77 FR 73897, December 12, 2012), incorrectly identified certain actions that are terminated in AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010).

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains January 16, 2013.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of December 12, 2012, AD 2012–25–03, Amendment 39–17284 (77 FR 73897, December 12, 2012), on page 73902, in the second column, paragraph (l) of AD 2012–25–03 is corrected to read as follows:

* * * * *

(l) Related AD Termination

Accomplishing the actions required by this AD terminates the requirements of paragraphs (f), (g), and (h) of AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), for that airplane only.

* * * * *

Issued in Renton, Washington, on February 15, 2013.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04337 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 740, 742, 743, 744, 745, 748, 752, 754, 756, 758, 760, 762, 764, and 772

[Docket No. 120320203–2295–03]

RIN 0694–AF63

Editorial Corrections to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule corrects reference and typographical errors in the Export Administration Regulations (EAR). The corrections are editorial in nature and do not affect license requirements.

DATES: Effective on February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Monjay, Office of Exporter Services, Bureau of Industry and Security, by telephone (202) 482–2440 or email: *Robert.Monjay@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of

mass destruction) and the means of delivering such weapons. The authority for parts 730, 734, 736, 742 and 745 of the EAR rests in part on that executive order and the annual notices continuing the international emergency declared therein. This rule revises the authority citations paragraphs to parts 730, 734, 736, 742 and 745 of the EAR (15 CFR parts 730, 734, 736, 742 and 745) to include citations to the President's Notice of November 1, 2012—Continuation of the National Emergency With Respect to Weapons of Mass Destruction (77 FR 66513, November 5, 2012), which is the most recent such annual notice.

On September 23, 2001, by Executive Order 13224 (66 FR 49079, 3 CFR, 2001 Comp., p. 786), pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), the President declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism. The authority for part 730 of the EAR rests in part on that executive order and the annual notices continuing the international emergency declared therein. This rule also revises the authority citations paragraphs to part 730 of the EAR (15 CFR part 730) to include citations to the President's Notice of September 11, 2012—Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism (77 FR 56519, September 12, 2012), which is the most recent such annual notice.

On January 25, 1995, by Executive Order 12947 (60 FR 5079, 3 CFR, 1995 Comp., p. 356), the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy and economy of the United States posed by grave acts of violence committed by terrorists who threaten to disrupt the Middle East process. On August 20, 1998, by Executive Order 13099 (63 FR 45167, 3 CFR, 1998 Comp., p. 208), the President modified the Annex to Executive Order 12947 to identify four additional persons who threaten to disrupt the Middle East peace process. On February 16, 2005, by Executive Order 13372, the President clarified the steps taken in Executive Order 12947. The national emergency declared in Executive Order 12947 has been continued in effect through successive annual presidential notices. The authority for Parts 730 and 744 of the EAR (15 CFR parts 730 and 744) rests in part on Executive Order 12947, as amended and clarified, and on the successive annual notices continuing the emergency declared in that Executive Order. This rule revises the authority citation paragraphs in those parts of the CFR to include a citation to the President's Notice of January 17, 2013 (Continuation of the National Emergency With Respect to Terrorists Who Threaten to Disrupt the Middle East Peace Process (78 FR 4303, January 22, 2013), which is the most recent such annual Presidential notice.

Corrections

This final rule updates seventeen parts of the EAR to correct spelling and typographical errors, inaccurate internal references, and incorrect paragraph designations.

This rule amends the EAR to update the mailing address for the Bureau of Industry and Security (BIS). The BIS mailroom is no longer Room 2705. Mail for BIS should now be directed to Room 2099B. Consistent with this room change, this rule makes seventeen changes in chapter VII, subchapter C of title 15 of the Code of Federal Regulations, the Export Administration Regulations (EAR). Specifically, this rule changes all references to ''Room 2705'', ''Room H2705'', or ''Room H 2705'', wherever they appear in chapter VII, subchapter C, to the corrected ''Room 2099B''.

Part 730

This rule corrects an error in Supplement No. 1 to Part 730 of the EAR that was in a final rule published by BIS on March 22, 2005 (70 FR 14385, 14386). The March 22, 2005 rule contained typographical and formatting errors in the title of the Information Collection under OMB Control Number 0694–0102. To correct these errors, this rule restates the title, ''Registration of U.S. Agricultural Commodities For Exemption From Short Supply Limitations on Export, and Petitions For The Imposition of Monitoring Or Controls On Recyclable Metallic Materials; Public Hearings'' to remove extraneous quotation marks and correct spelling and capitalization errors.

This rule updates Supplement No. 3 to Part 730 of the EAR with the correct contact information for the Directorate of Defense Trade Controls. More specifically, Supplement No. 3 to Part 730 is modified to remove the outdated telephone and facsimile numbers for the Directorate of Defense Trade Controls and insert the correct telephone and facsimile numbers and the Web site address: telephone (202) 663–2700, facsimile (202) 261–8695, and Web site *http://www.pmddtc.state.gov/index.html.* This change ensures that all information in Supplement 3 to Part 730 is correct and useful as reference information.

Part 732

This rule updates part 732 of the EAR by modifying the title for Supplement No. 2 to Part 732 to ''SUPPLEMENT NO. 2 TO PART 732—SUBJECT TO THE EAR?'' This change will make the title more applicable to Supplement No. 2.

Part 734

This rule updates Supplement No. 2 to Part 734 of the EAR to remove duplicative and potentially confusing information in the address for submission of required reports. More specifically, paragraph (b)(2)(iii) incorrectly lists the address for the BIS Regulatory Policy Division. Paragraph (b)(2)(iii) is modified to read ''U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th and Pennsylvania Avenue NW., Room 2099B, Washington, DC 20230.'' This change removes the duplicative use of ''Regulatory Policy Division'' in the address, updates the room number, and ensures that the address block is correct.

Part 736

This rule updates Supplement No. 1 to Part 736 of the EAR by reformatting and renumbering the supplement to conform to CFR paragraph structure and to include headers for each of the General Orders. More specifically, Supplement No. 1 to Part 736 is modified by adding proper paragraph structure and inserting the header ''General Order No. 1,'' ''General Order No. 2,'' and ''General Order No. 4'' before each applicable paragraph. This change will make this part of the EAR easier to understand and more useful.

Part 740

This rule corrects a typographical error in Supplement No. 1 to Part 740 that was in a final rule published by BIS on August 5, 1997 (62 FR 42047, 42049). The August 5, 1997 rule incorrectly spelled Tajikistan as ''Tajikstan'' in Country Group D. To correct this error, this rule removes the word ''Tajikstan'' and replaces it with the word ''Tajikistan'' in the Country column for the Country Group D chart on Supplement No. 1 to Part 740.

Part 742

This rule corrects a grammatical error in § 742.9 of the EAR to create proper subject/verb agreement. More specifically, the word ''is'' at paragraph (b)(1)(ii) is removed and the word ''are'' is inserted in its place. This change

ensures that § 742.9 is clear and that users can understand its requirements.

This rule corrects a grammatical error in § 742.10 of the EAR to create proper subject/verb agreement. More specifically, the word ''is'' at paragraph (b)(1)(ii) is removed and the word ''are'' is inserted in its place. This change ensures that § 742.10 is clear and that users can understand its requirements.

This rule corrects § 742.17 of the EAR for a formatting error in a final rule published by BIS on April 13, 2009 (64 FR 17968, 17973) by renumbering the footnotes in part 742 in sequential order. More specifically, the footnote in § 742.17 is renumbered from ''1'' to ''2'' as footnote number 1 appears in § 742.10. This change corrects an oversight whereby the footnote was added, but was numbered ''1'' as it was the only footnote to part 742 appearing in that **Federal Register** Notice.

Part 744

This rule corrects a formatting error in Supplement No. 2 to Part 744 as published by BIS on June 19, 2007 (72 FR 33646, 33658). The June 19, 2007 rule numbered the paragraphs in Category 3 out of order. Specifically, the second paragraph was numbered (iii) and the third paragraph was numbered (ii). To correct this error, this rule renumbers the paragraphs of Category 3 in sequential order.

Part 748

This rule corrects a reference error in § 748.2 of the EAR as published by BIS on July 11, 2011 (76 FR 40602, 40604), which contained an error in the amendatory text paragraphs (a)(2) and (a)(3). Specifically, the rule erroneously identified the Northern California Branch as being in Irvine rather than San Jose. This rule corrects this error, by amending the address blocks thereby ensuring that BIS offices are properly identified.

This rule corrects a typographical error in Supplement 4 to Part 748 of the EAR as published by BIS on March 25, 1996 (61 FR 12714, 12826). The March 25, 1996 rule contained a typographical error for the address of the Ministere de l'Economie et des Finances, Direction Generale des Douanes et Droits Indirects, Division des Affaires Juridiques et Contentieuses. Specifically, the rule misidentified ''Paris Cedex 9'' as ''Paris Codex 9''. This rule corrects this error, by amending the address block and thereby ensuring that the IC/DV Authority in France is properly identified.

Part 752

This rule corrects a grammatical error in § 752.11 of the EAR. Specifically, paragraphs (c)(1) through (c)(15) consist of a list of the elements of an Internal Control Program, and the word ''and'' is not included prior to the last item in the list. This rule corrects this error by adding the word ''and'' at the end of paragraph (c)(14).

This rule corrects a reference error in the title of Supplement No. 2 to Part 752 as published by BIS on April 24, 2006 (71 FR 20876, 20886). The April 24, 2006 rule incorrectly identified Supplement No. 2 to Part 752 as ''Instructions for Completing Form BIS–748P–B, 'Item Annex' ''. However, the correct form number for the ''Item Annex'' is Form BIS–748P–A. This rule corrects this error by removing the word ''BIS–748P–B'' and inserting the word ''BIS–748P–A'' in its place.

This rule corrects a reference error in Supplement No. 5 to Part 752 as published by BIS on May 9, 1997 (62 FR 25451, 25467). The May 9, 1997 rule incorrectly identified Supplement No. 5 to Part 752 as ''Instructions for Completing Form BIS–748–B, End-User Appendix''. However, the correct form number for the ''End-User Appendix'' is Form BIS–748P–B. This rule corrects this error by removing the word ''BIS–748–B'' and inserting the word ''BIS–748P–B'' in its place.

Part 754

This rule corrects a typographical error in § 754.4 of the EAR as published by BIS on September 22, 2003 (68 FR 50470, 50473). The September 22, 2003 rule contained a typographical error in the amendatory instructions for paragraph (d)(3)(ii). Specifically, the rule used the word ''of'' in the phrase ''Shipper's Export Declaration of Automated Export System record'' rather than the word ''or''. Additionally, the Shipper's Export Declaration (SED) is no longer a valid method of reporting export information, so the reference to the SED is removed to update the EAR. This rule corrects this error by removing ''Shipper's Export Declaration or'' and adding in its place ''The'' in paragraph (d)(3)(ii).

This rule corrects Supplement No. 3 to Part 754 for an error in a final rule published by BIS on March 25, 1996 (61 FR 12714, 12844). The March 25, 1996 rule contained a typographical error, listing the citation to the National Emergencies Act as ''() U.S.C. 1601 et seq.).'' To correct this error, the incorrect citation is removed and the correct citation ''(50 U.S.C. 1601 *et seq.*)'' is inserted in its place.

Part 756

This rule corrects an error in § 756.1 of the EAR as published by BIS on March 25, 1996 (61 FR 12714, 12851). The March 25, 1996 rule incorrectly left the word ''Definitions'' in paragraph (b) when the section was reserved. This rule corrects this error by removing the word ''Definitions'' from paragraph (b).

Part 758

This rule revises § 758.2 of the EAR. Paragraphs (d)(1) and (d)(2) contain contact information for the U.S. Census Bureau and Bureau of Industry and Security. This rule inserts the word ''telephone:'' before the first phone number in each paragraph. This change will improve the readability of § 758.2.

This rule corrects a grammatical error in § 758.7 of the EAR as published by BIS on August 21, 2003 (68 FR 50470, 50474). The August 21, 2003 rule incorrectly contained the word ''to'' rather than the word ''of'' in the phrase ''and officials to the Office of Export Enforcement'' of paragraph (b)(6). Additionally, the Shipper's Export Declaration is no longer a valid method of reporting export information, so the reference to the SED is removed to update the EAR. This rule removes the word ''to'' and inserts the word ''of'' in its place and removes the phrase ''SED or'' in two places in paragraph (b)(6).

Part 760

This rule revises Supplement No. 1 to Part 760 of the EAR to update the required notary seal blocks. Paragraphs (I)(A), (I)(B), and (I)(C) contain certifications that are related to boycott activities. These certifications contain signature and notary blocks that include the first two digits of the year. These digits are currently 19, so to update the regulations for the 21st century 19 is changed to 20. This change will keep the regulations current.

Part 762

This rule corrects a citation error in § 762.1 of the EAR as published by BIS on March 25, 1996 (61 FR 12714, 12900). The March 25, 1996 rule, at paragraph (b), directed that records shall be produced ''in a manner provided by § 762.6 of this part.'' However, instructions for the production of records required to be maintained by part 762 are contained in § 762.7. To correct this error, this rule modifies the language of paragraph (b) to ''in a manner provided by § 762.7 of this part.''

This rule corrects a reference error in § 762.2 of the EAR. Paragraph (b)(7) identifies ''Supplement No. 3 to Part 742 High Performance Computers;

Safeguards and related Information'' which was removed from the EAR and reserved by a final rule published by BIS on April 21, 2006 (71 FR 20876, 20885). The April 21, 2006 rule moved the requirement for a security safeguard plan to paragraph (c)(2) of Supplement No. 2 to Part 748, but did not revise the reference in paragraph (b)(7). To correct this error, this rule removes the language ''Supplement No. 3 to part 742 High Performance Computers; Safeguards and related Information'' from paragraph (b)(7) and inserts the language ''Supplement No. 2 to Part 748 paragraph (c)(2), Security Safeguard Plan requirement'' in its place.

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(9) identifies ''§ 740.7, Humanitarian donations (NEED)'' which was renumbered and revised by a final rule published by BIS on December 4, 1996 (61 FR 64272, 20885). The December 4, 1996 rule did not revise the reference in paragraph (b)(9). To correct this error, this rule removes the language ''§ 740.7, Humanitarian donations (NEED)'' and inserts the language ''§ 740.12, Humanitarian donations (GFT)'' in its place.

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(12) identifies ''§ 748.4(a), Disclosure and substantiation of facts on license applications'' which was revised by a final rule published by BIS on July 10, 2000 (65 FR 42565, 42569). The July 10, 2000 rule did not revise the reference in paragraph (b)(12). To correct this error, this rule removes the language ''§ 748.4(a), Disclosure and substantiation of facts on license applications'' and inserts the language ''§ 748.4(b), Disclosure of parties on license applications and the power of attorney'' in its place.

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(15) identifies ''§ 748.10, Import and End-user Certificates'' which was revised by a final rule published by BIS on June 19, 2007 (72 FR 33646, 33659). The June 19, 2007 rule did not revise the reference in paragraph (b)(15). To correct this error, this rule removes the language ''§ 748.10, Import and End-user Certificates'' and inserts the language ''§ 748.10, Import Certificates and End-User Statements'' in its place.

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(18) identifies ''§ 748.2(c), Obtaining forms; mailing addresses'' which was removed by a final rule published by BIS on August 21, 2008 (73 FR 49323, 49330). The August 21, 2008 rule did not revise the reference in paragraph (b)(18). To correct this error, this rule removes the language ''§ 748.2(c), Obtaining forms; mailing addresses'' and inserts the language ''§ 748.1(d)(2), Procedure for requesting authorization to file paper applications, notifications, or requests'' in its place.

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(31) identifies ''§ 754.2(j)(3), Recordkeeping requirements for deep water ballast exchange'' which was moved by a final rule published by BIS on July 11, 2001 (76 FR 40602, 40604) to § 754.2(j)(2). The July 11, 2001 rule did not revise the reference in paragraph (b)(18). To correct this error, this rule removes the language ''§ 754.2(j)(3), Recordkeeping requirements for deep water ballast exchange'' and inserts the language ''§ 754.2(j)(2), Recordkeeping requirements for deep water ballast exchange'' in its place.

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(34) identifies ''§ 758.1 and § 758.2, Shipper's Export Declaration or Automated Export System record.'' The Shipper's Export Declaration is no longer a valid method of reporting export information, so the reference is removed to update the EAR. This rule removes ''Shipper's Export Declaration or'' from paragraph (b)(34).

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(36) identifies ''§ 760.6, Restrictive Trade Practices and Boycotts'' in error. A final rule published by BIS on March 25, 1996 (61 FR 12714, 12891) identified § 760.6 when that rule set out part 760 in its entirety and did not include § 760.6. The reporting requirements of part 760 are included in § 760.5, so to correct the error, this rule removes the language ''§ 760.6, Restrictive Trade Practices and Boycotts'' and inserts the language ''§ 760.5, Reporting requirements'' in its place.

This rule revises § 762.2 of the EAR to correct an error. Paragraph (b)(45), identifying ''§ 758.2(c), Assumption writing; and'', was added by a final rule published by BIS on July 10, 2000 (65 FR 42565, 42573). The July 10, 2000 rule incorrectly identified § 758.2(c) as the location of the written assumption requirement, rather than § 758.3(b). To correct this error, this rule removes the language ''§ 758.2(c), Assumption writing'' and inserts the language ''§ 758.3(b), Routed Export Transactions;'' in its place.

This rule revises § 762.2 to make it easier to understand. The subparagraphs of paragraph (b) are reordered in sequence by citation.

Part 764

This rule revises § 764.3 of the EAR to correct an error. The heading to paragraph (a)(1) was to be revised to read ''Civil Monetary Penalty'' by a final rule published by BIS on August 4, 2006 (71 FR 44189, 44190); however the rule did not contain an amendatory instruction identifying the revision to the heading. To correct this error, this rule revises the heading to read ''Civil Monetary Penalty.''

Part 772

This rule revises part 772 to update the reference to the Web site for the Automated Export System. The definition of ''Automated Export System (AES)'' includes a reference to the former AES Web site, ''*http://www.customs.ustreas.gov/impoexpo/abaesint.htm*.'' Additionally, the Shipper's Export Declaration is no longer a valid method of reporting export information, so the reference to the SED is removed to update the EAR. To keep the information in the EAR up to date, this rule updates the Web site address by removing the reference ''*http://www.customs.ustreas.gov/impoexpo/abaesint.htm*'' and replacing it with ''*http://www.census.gov/foreign-trade/aes/index.html*'' in the definition of ''Automated Export System (AES)'' and removing the reference to the paper filing of the SED.

This rule amends part 772 of the EAR by revising the spelling of the word ''signaling'' to ensure a uniform spelling is used throughout the EAR. The word ''signaling'' is spelled two ways throughout the EAR. The British spelling of ''signalling'' is used in the definition of ''Data signalling rate'' in part 772, consistent with the text of that definition in the Wassenaar Arrangement. The American spelling ''signaling'' is used elsewhere in the EAR, including the use of that defined term in the applicable ECCNs. All of the definitions in the Wassenaar Arrangement that contain the word ''signalling'' were removed as of December 14, 2011. Therefore, in adopting a uniform spelling throughout the EAR, the American spelling is to be used. The spelling of the word ''signalling'' in the definition of ''Data signalling rate'' in part 772 will be revised to ''signaling'' at two occurrences.

This rule corrects an error in part 772 of the EAR as published by BIS on February 18, 2005 (70 FR 8245, 8250). The February 18, 2005 rule contained the incorrect spellings of Kazakhstan and Tajikistan in the definition of ''Controlled country'' at part 772. To

correct this error, this rule removes the words ''Kazakstan'' and ''Tajikstan'' from the definition of ''Controlled country'' in part 772 and inserts words ''Kazakhstan'' and ''Tajikistan'' in alphabetic order.

This rule corrects a citation error in part 772 of the EAR as published by BIS on March 25, 1996 (61 FR 12714, 12930). The March 25, 1996 rule contained a typographical error in the definition of ''General Prohibitions'' in part 772. Specifically, the rule misidentified the location of the General Prohibitions in the EAR as part 734 of the EAR, rather than part 736 of the EAR. This rule corrects this error, by removing the citation ''734'' and inserting the citation ''736'' in its place.

This rule corrects an incorrect reference in part 772 of the EAR to update the name of the Directorate of Defense Trade Controls. The definition of ''Missile Technology Control Regime (MTCR)'' in part 772 incorrectly refers to the ''Department of State's Office of Defense Trade Controls'' rather than the ''Department of State's Directorate of Defense Trade Controls.'' This rule corrects this error, by removing the words ''Office of Defense Trade Controls'' and inserting the words ''Directorate of Defense Trade Controls'' in its place. In order to harmonize the Department of Commerce reference with the Department of State reference, this rule adds a reference to BIS. In addition, as this definition speaks to where the controls for items specified on the MTCR Annex reside, this rule adds references to the EAR and International Traffic in Arms Regulations (ITAR).

This rule corrects part 772 of the EAR for an error in the final rule that was published by BIS on March 25, 1996 (61 FR 12714, 12939). The March 25, 1996 rule contained a typographical error in the definition of ''Superalloy'' at part 772. Specifically, the rule transposed two digits in the Celsius temperature translation from Kelvin, listing ''694 degrees C'' rather than ''649 degrees C''. The use of the word degrees in place of the symbol ''°'' in a temperature description is also inconsistent with the remainder of the EAR and the Wassenaar Arrangement. This rule corrects these errors, by removing the phrase ''694 degrees C'' and inserting the phrase ''649° C'' in its place.

This rule corrects a typographical error in part 772 of the EAR as published by BIS on March 25, 1996 (61 FR 12714, 12940). The March 25, 1996 rule contained an error in the definition of ''Transfer laser'' in part 772. Specifically, the rule included the word ''lasting'' instead of the word ''lasing.'' This rule corrects this error, by removing the word ''lasting'' and inserting the word ''lasing'' in its place.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''not significant regulatory action,'' under section 3(f) of Executive Order 12866.

2. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. The revisions made by this rule are administrative, not substantive, in nature and do not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide prior notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. As stated above, these revisions do not alter any rights or obligations, but merely correct typographical and organizational errors in the EAR. As a result, no benefit would be gained by delaying this rule's effectiveness for 30 days. This final rule is exempt from the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) because no general notice of proposed rulemaking was required for this rule.

List of Subjects

15 CFR Part 730, 732, 734, 742, 743, 758, 760, 762, and 764

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Parts 736, 745, and 756

Administrative practice and procedure.

15 CFR Part 740, 744, 748, 752, 754, and 772

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 730, 732, 734, 736, 740, 742, 743, 744, 745, 748, 752, 754, 756, 758, 760, 762, 764, and 772 of the EAR (15 CFR Parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September, 12, 2012) ; Notice of November 1, 2012, 77 FR 66513 (November 5, 2012); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013).

Supplement No. 1 to Part 730—[Amended]

■ 2. Supplement No. 1 to Part 730, the title entry in the row for collection number 0694–0102 is revised to read as follows ''Registration of U.S. Agricultural Commodities For Exemption From Short Supply Limitations on Export, and Petitions For

The Imposition of Monitoring Or Controls On Recyclable Metallic Materials; Public Hearings''.

Supplement No. 2 to Part 730—[Amended]

■ 3. Supplement No. 2 to Part 730 is amended by removing the phrase ''Room 2705'' from paragraph (b)(1) and adding the phrase ''Room 2099B'' in its place.

Supplement No. 3 to Part 730—[Amended]

■ 4. Supplement No. 3 to Part 730 is amended by revising the ''Defense Services and Defense Articles'' section to read as follows:

Supplement No. 3 to Part 730—Other U.S. Government Departments and Agencies With Export Control Responsibilities

* * * * *

Defense Services and Defense Articles

*Department of State, Directorate of Defense Trade Controls, Tel. (202) 663–2700, Fax: (202) 261–8695, Internet: *http://www.pmddtc.state.gov/index.html.*

* * * * *

PART 732—[AMENDED]

■ 5. The authority citation for part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

Supplement No. 2 to Part 732—[Amended]

■ 6. Supplement No. 2 to Part 732 is amended by revising the title of the supplement to read as follows:

Supplement No. 2 to Part 732—Subject to the Ear?

* * * * *

PART 734—[AMENDED]

■ 7. The authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

Supplement No. 1 to Part 734—[Amended]

■ 8. Supplement No. 1 to Part 734 is amended by removing the phrase ''Room 2705'' from the Answer to Question (D)(3) and adding the phrase ''Room 2099B'' in its place.

Supplement No. 2 to Part 734—[Amended]

■ 9. Supplement No. 2 to Part 734 is amended by revising paragraph (b)(2)(iii) to read as follows:

Supplement No. 2 to Part 734—Guidelines for *De Minimis* Rules

* * * * *

(b) * * *

(2) * * *

(iii) Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th and Pennsylvania Avenue NW., Room 2099B, Washington, DC 20230.

* * * * *

PART 736—[AMENDED]

■ 10. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 11. Supplement No. 1 to Part 736 is revised to read as follows:

Supplement No. 1 to Part 736—General Order

(a) General Order No. 1:

General Order No. 1 of September 16, 1998; Establishing a 24-month validity period on reexport authorizations issued without a validity period and revoking those exceeding that period.

(1) Reexport authorizations issued within 24-months of the General Order. All reexport authorizations issued with no validity period within the 24-months preceding September 16, 1998 shall be deemed to have an expiration date which shall be the date 24-months from the date of issuance of the reexport authorization or November 16, 1998, whichever is longer.

(2) Reexport authorizations issued before the 24-month period preceding the General Order. For reexport authorizations issued with no validity period before the 24-month period preceding September 16, 1998:

(i) Effective September 16, 1998, all such outstanding reexport authorizations for terrorist-supporting countries (see parts 742 and 746 of the EAR) are revoked.

(ii) Effective November 16, 1998, all other such outstanding reexport authorizations are revoked.

(3) Extensions. If necessary, you may request extensions of such authorizations according to procedures set forth in § 750.7(g) of the EAR.

(4) Specific Notice from BIS. If you have received, or should you receive, specific notice from BIS with regard to a reexport authorization covered by this General Order, informing you of a revocation, suspension, or revision (including validity period) of any such reexport authorization, then the terms of that specific notice will be controlling.

(5) Definition of ''authorization''. The term ''authorization'' as used in this General Order encompasses the range of reexport authorizations granted by BIS, which includes licenses, individual letters, and other types of notifications.

(b) General Order No. 2:

General Order No. 2; section 5(b) of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (SAA) gives the President authority to waive the application of certain prohibitions set forth in the SAA if the President determines that it is in the national security interest of the United States to do so. The President made such a determination in Executive Order 13338, finding that it was ''in the national security interest of the United States to waive application of subsection 5(a)(1) and 5(a)(2)(A) of the SAA so as to permit the exportation or reexportation of certain items as specified in the Department of Commerce's General Order No. 2.'' The President's reference to General Order No. 2 addresses applications to export and reexport the following items, which are considered on a case-by-case basis as opposed to the general policy of denial set forth in section 746.9 of the Regulations: Items in support of activities, diplomatic or otherwise, of the United States Government (to the extent that regulation of such exportation or reexportation would not fall within the President's constitutional authority to conduct the nation's foreign affairs); medicine (on the CCL) and medical devices (both as defined in part 772 of the EAR); parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft; aircraft chartered by the Syrian Government for the transport of Syrian Government officials on official Syrian Government business; telecommunications equipment and associated computers, software and technology; and items in support of United Nations operations in Syria. The total dollar value of each approved license for aircraft parts for flight safety normally will be limited to no more than $2 million over the 24-month standard license term, except in the case of complete overhauls.

Note to General Order No. 2: The controls for exports and reexports to Syria are set forth in § 746.9 of the EAR.

(c) General Order No. 3 [Reserved]

(d) General Order No. 4:

General Order No. 4 of June 13, 2008, as amended on September 3, 2009, amending existing licenses for exports of consolidated gift parcels to Cuba due to changes in License Exception GFT.

(1) Section 740.12(a) of the EAR authorizes, among other things, certain exports of gift parcels to Cuba pursuant to a license exception. However, consolidated shipments of multiple gift parcels to Cuba require a license even if all of the individual items within the consolidated gift parcel would be eligible for this license exception if shipped alone.

(2) Notwithstanding any statements to the contrary on the license itself, licenses authorizing the export to Cuba of consolidated gift parcels described in paragraph (a) of this order that are valid on September 3, 2009 authorize the export of consolidated shipments to Cuba of gift parcels that comply with the requirements of License Exception GFT found in § 740.12(a) of the EAR as of September 3, 2009.

(3) This General Order does not change any of the other terms (including total value of items that may be exported or expiration date) of the licenses it affects.

PART 740—[AMENDED]

■ 12. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 740.17 [Amended]

■ 13. Section 740.17 is amended by removing the phrase ''Room 2705'' from paragraph (e)(1)(ii)(A) and adding the phrase ''Room 2099B'' in its place.

Supplement No. 1 to Part 740—[Amended]

■ 14. Supplement No. 1 to Part 740 is amended by removing the word ''Tajikstan'' from the Country Column of the Country Group D chart and adding in its place ''Tajikistan''.

PART 742—[AMENDED]

■ 15. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 16. Section 742.9 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 742.9 Anti-terrorism: Syria.

* * * * *

(b) * * *

(1) * * *

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL and are controlled by equipment or material entries ending in the number ''18.''

* * * * *

■ 17–18. Section 742.10 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 742.10 Anti-terrorism: Sudan.

* * * * *

(b) * * *

(1) * * *

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL and are controlled by equipment or material entries ending in the number ''18.''

* * * * *

§ 742.15 [Amended]

■ 19. Section 742.15 is amended by removing the phrase ''Room 2705'' from paragraph (c)(2)(ii)(A) and adding the phrase ''Room 2099B'' in its place.

§ 742.17 [Amended]

■ 20. Section 742.17 is amended by redesignating footnote 1 in paragraph (a) as footnote 2 in the text of paragraph (a) and in the text of the footnote.

PART 743—[AMENDED]

■ 21. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 743.1 [Amended]

■ 22. Section 743.1 is amended in paragraph (g)(1) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

PART 744—[AMENDED]

■ 23. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September 12, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013).

Supplement No. 2 to Part 744—[Amended]

■ 24. Supplement No. 2 to Part 744 is amended by correcting the paragraph designation for (3)(iii) as (3)(ii) and the designation for (3)(ii) as (3)(iii).

PART 745—[AMENDED]

■ 25. The authority citation for part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

PART 748—[AMENDED]

■ 26. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 748.1 [Amended]

■ 27. Section 748.1 is amended in paragraph (d)(2) by removing the phrase ''Room H2705'' and adding the phrase ''Room 2099B'' in its place.

■ 28. Section 748.2 is amended by revising paragraphs (a)(2) and (3) to read as follows:

§ 748.2 Obtaining forms; mailing addresses.

(a) * * *

(2) Bureau of Industry and Security, Western Regional Office, U.S. Department of Commerce, 2302 Martin St., Suite 330, Irvine, CA 92612, Tel: (949) 660–0144, Fax: (949) 660–9347, or

(3) Bureau of Industry and Security, Western Regional Office, Northern California Branch, U.S. Department of Commerce, 160 W. Santa Clara Street, Suite 725, San Jose, CA 95113, Tel: (408) 998–8805 or (408) 998–8806, Fax: (408) 998–8677.

* * * * *

§ 748.13 [Amended]

■ 29. Section 748.13 is amended in paragraph (c)(2) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

§ 748.15 [Amended]

■ 30. Section 748.15 is amended in paragraphs (a)(1) and (f)(1)(ii) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

Supplement No. 4 to Part 748—[Amended]

■ 31. Supplement No. 4 to Part 748 is amended in the address column of the France entry by removing the word ''Codex'' and adding in its place ''Cedex''.

Supplement No. 5 to Part 748—[Amended]

■ 32. Supplement No. 5 to Part 748 is amended in paragraph (a)(2)(i) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

PART 752—[AMENDED]

■ 33. The authority citation for part 752 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 34. Section 752.11 is amended by revising paragraph (c)(14) to read as follows:

§ 752.11 Internal Control Programs.

* * * * *

(c) * * *

(14) A system for assuring compliance with controls over exports and reexports for missile-related end-uses and end-users described in § 744.3 of the EAR; and

* * * * *

§ 752.17 [Amended]

■ 35. Section 752.17 is amended by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

■ 36. Supplement 2 to Part 752 is amended by revising the heading to read as follows:

Supplement No. 2 to Part 752—Instructions for Completing Form BIS–748P–A, ''Item Annex''

* * * * *

■ 37. Supplement 5 to Part 752 is amended by revising the heading to read as follows:

Supplement No. 5 to Part 752—Instructions for Completing Form BIS–748P–B, End–User Appendix

* * * * *

PART 754—[AMENDED]

■ 38. The authority citation for part 754 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 39. Section 754.4 is amended by revising paragraph (d)(3)(ii) to read as follows:

§ 754.4 Unprocessed western red cedar.

* * * * *

(d) * * *

(3) * * *

(ii) The Automated Export System record.

* * * * *

§ 754.6 [Amended]

■ 40. Section 754.6 is amended in paragraph (c) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

§ 754.7 [Amended]

■ 41. Section 754.7 is amended in paragraph (d) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

Supplement No. 3 to Part 754—[Amended]

■ 42. Supplement No. 3 to Part 754 is amended in paragraph (3) in the ''Public Law 104–58 Sec. 201 Exports of Alaskan North Slope Oil.'' section by removing ''() U.S.C. 1601 et seq.)'' and adding in its place ''(50 U.S.C. 1601 et seq.)''.

PART 756—[AMENDED]

■ 43. The authority citation for part 756 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 756.1 [Amended]

■ 44. Section 756.1 is amended by removing the subject heading to reserved paragraph (b).

PART 758—[AMENDED]

■ 45. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 46. Section 758.2 is amended by revising paragraphs (d)(1) and (2) to read as follows:

§ 758.2 Automated Export System (AES).

* * * * *

(d) * * *

(1) For additional information on the AES in general, please contact: Chief Foreign Trade Division, U.S. Census Bureau, telephone: (301) 457–2255, facsimile: (301) 457–2645.

(2) For information about BIS's Option 4 approval process to use AES Option 4 for items subject to the EAR, contact: Director, Office of Enforcement Analysis, Bureau of Industry and Security, telephone: (202) 482–4255, facsimile: (202) 482–0971.

§ 758.4 [Amended]

■ 47. Section 758.4 is amended in paragraph (c) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

§ 758.5 [Amended]

■ 48. Section 758.5 is amended in paragraph (e)(2)(ii) by removing the phrase ''Room 2705'' and adding the phrase ''Room 2099B'' in its place.

■ 49. Section 758.7 is amended by revising the second sentence of paragraph (b)(6) to read as follows:

§ 758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs offices and Postmasters in clearing shipments.

* * * * *

(b) * * *

(6) * * * In addition to the authority of Customs officers to seize and detain items, both Customs officials and officials of the Office of Export Enforcement are authorized to detain any shipment held for review of the AES record, or if there is no AES record, the bill of lading or other loading document covering the items about to be exported, or for physical inspection of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

* * * * *

PART 760—[AMENDED]

■ 50. The authority citation for part 760 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

Supplement No. 1 to Part 760—[Amended]

■ 51. Supplement 1 to Part 760 is amended by removing the year reference ''19____'' and adding in its place ''20____'' in three (3) places in section 1.

PART 762—[AMENDED]

■ 52. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 762.1 [Amended]

■ 53. Section 762.1 is amended in paragraph (b) by removing the reference ''§ 762.6'' and adding in its place ''§ 762.7''.

■ 54. Section 762.2 is amended by revising paragraph (b) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) *Records retention references.* Paragraph (a) of this section describes records that are required to be retained. Other parts, sections, or supplements of the EAR which require the retention of records or contain recordkeeping provisions, include, but are not limited to the following:

(1) § 732.6, Steps for other requirements;

(2) § 734.4(g), *de minimis* calculation (method);

(3) Part 736, General Prohibitions;

(4) § 740.1, Introduction (to License Exceptions);

(5) [RESERVED]

(6) § 740.10(c), Servicing and replacement of parts and equipment (RPL);

(7) [RESERVED]

(8) § 740.12, Humanitarian donations (GFT);

(9) § 740.13(f), Technology and software—unrestricted (TSU);

(10) [RESERVED]

(11) § 743.1, Wassenaar reports;

(12) § 743.2, High Performance Computers;

(13) [RESERVED]

(14) § 745.1, Annual reports;

(15) § 745.2, End-use certificates;

(16) § 746.3 Iraq;

(17) Part 747, Special Iraq Reconstruction License;

(18) § 748.1(d)(2), Procedure for requesting authorization to file paper applications, notifications, or requests;

(19) § 748.4(b), Disclosure of parties on license applications and the power of attorney;

(20) § 748.6, General instructions for license applications;

(21) § 748.9, Support documents for license applications;

(22) § 748.10, Import Certificates and End-User Statements;

(23) § 748.11, Statement by Ultimate Consignee and Purchaser;

(24) § 748.13, Delivery Verification (DV);

(25) § 748.14, Exports of firearms;

(26) Supplement No. 2 to Part 748 paragraph (c)(2), Security Safeguard Plan requirement;

(27) § 750.7, Issuance of license and acknowledgment of conditions;

(28) § 750.8, Revocation or suspension of license;

(29) § 750.9, Duplicate licenses;

(30) § 750.10, Transfer of licenses for export;

(31) § 752.7, Direct shipment to customers;

(32) § 752.9, Action on SCL applications;

(33) § 752.10, Changes to the SCL;

(34) § 752.11, Internal Control Programs;

(35) § 752.12, Recordkeeping requirements;

(36) § 752.13, Inspection of records;

(37) § 752.14, System reviews;

(38) § 752.15, Export clearance;

(39) § 754.2(j)(2), Recordkeeping requirements for deep water ballast exchange

(40) § 754.4, Unprocessed western red cedar;

(41) § 758.1 and § 758.2, Automated Export System record;

(42) § 758.1(h), Record and proof of agent's authority;

(43) § 758.3(b), Routed Export Transactions;

(44) § 758.6, Destination control statements;

(45) § 760.5, Reporting requirements;

(46) § 762.2, Records to be retained;

(47) § 764.2, Violations;

(48) § 764.5, Voluntary self-disclosure; and

(49) § 766.10, Subpoenas.

* * * * *

PART 764—[AMENDED]

■ 55. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 764.3 [Amended]

■ 56. Section 764.3 is amended by:

■ a. Revising the paragraph (a)(1) subject heading to read ''Civil monetary penalty''; and

■ b. Removing from paragraph (a)(2) the phrase ''Room H 2705'' and adding the phrase ''Room 2099B'' in its place.

PART 772—[AMENDED]

■ 57. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 58. Section 772.1 is amended by revising the definitions of ''Automated Export System (AES)'', ''Controlled country'', ''Data Signalling Rate'', ''General Prohibitions'', ''Missile Technology Control Regime (MTCR)'', ''Superalloy'', and ''Transfer laser'' to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Automated Export System (AES). AES is a nationwide system operational at all ports and for all methods of transportation through which export shipment data required by multiple agencies is filed electronically to Customs, using the efficiencies of Electronic Data Interchange (EDI). AES allows the export information to be collected electronically and edited immediately. For more information about AES, visit the Bureau of Census Web site at: *http://www.customs.ustreas.gov/impoexpo/abaesint.htm.*

* * * * *

Controlled country. Countries designated controlled for national security purposes under authority delegated to the Secretary of Commerce by Executive Order 12214 of May 2, 1980 pursuant to section 5(b) of the EAA. The controlled countries are: Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, the People's Republic of China, Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. All of the controlled countries except Cuba are listed in Country Group D:1 of the EAR. Cuba is listed in Country Group E:2. This definition does not apply to part 768 of the EAR (Foreign Availability), which provides a dedicated definition.

* * * * *

''Data signaling rate.'' (Cat 5) means the rate, as defined in ITU Recommendation 53–36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Bits for coding, checking and synchronization functions are to be included.

Note: When determining the ''data signaling rate'', servicing and administrative channels shall be excluded.

Technical Note: It is the maximum one-way rate, i.e., the maximum rate in either transmission or reception.

* * * * *

General prohibitions. The 10 prohibitions found in part 736 of the EAR that prohibit certain exports,

reexports, and other conduct, subject to the EAR, absent a license, license exception, or determination that no license is required (''NLR'').

* * * * *

Missile Technology Control Regime (MTCR). The United States and other nations in this multilateral control regime have agreed to guidelines for restricting the export and reexport of dual-use items that may contribute to the development of missiles. The MTCR Annex lists missile-related equipment and technology controlled either by the Department of Commerce's Bureau of Industry and Security—Export Administration Regulations (15 CFR Parts 730 through 799) or by the Department of State's Directorate of Defense Trade Controls—International Traffic in Arms Regulations (22 CFR Parts 120 through 130).

* * * * *

''Superalloy''. (Cat 2 and 9)—Nickel-, cobalt-, or iron-base alloys having strengths superior to any alloys in the AISI 300 series at temperatures over 922 K (649 °C) under severe environmental and operating conditions.

* * * * *

''Transfer laser''. (Cat 6)—A ''laser'' in which the lasing species is excited through the transfer of energy by collision of a non-lasing atom or molecule with a lasing atom or molecule species.

* * * * *

Dated: February 19, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–04158 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is revising its Rules of Practice governing access to agency records. The Commission is adding one new category of public record materials; inserting additional contact information for the filing of initial Freedom of Information Act (''FOIA'') requests; clarifying agency procedures for acknowledging the receipt of a request, the proper filing of a request, and the ''cut-off'' date for searches; and allowing an extension in unusual circumstances of the time period for a FOIA requester to file an administrative appeal.

DATES: These amendments are effective February 28, 2013.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3355.

SUPPLEMENTARY INFORMATION: This document implements Rule amendments that create one new category of public record materials; provide additional contact information for the filing of initial FOIA requests; set out agency procedures for acknowledging the receipt of a request, the proper filing of a request, and for the ''cut-off'' date for searches; and extend the time period for a FOIA requester to file an administrative appeal in unusual circumstances. Pursuant to 5 U.S.C. 553, these changes do not require public comment because they relate solely to agency practice and procedure.

In a separate document published in today's **Federal Register**, the Commission seeks public comment pursuant to 5 U.S.C. 552(a)(4)(A)(i) on its proposal to amend its Rules of Practice to alter its fee schedule to reflect changes in the types of services that are provided, changes in the costs of providing services, and to add other fees for new services.

Public Record

The Commission is amending Rule 4.9(a)(3), 16 CFR 4.9(a)(3), to include the specific FOIA weblink at *www.ftc.gov.*

The Commission is amending Rule 4.9(a)(4)(i), 16 CFR 4.9(a)(4)(i), to include the mailing address for the Consumer Response Center, which is the contact point for the copying of official public records.

The Commission is amending Rule 4.9(a)(4)(iii), 16 CFR 4.9(a)(4)(iii), to include contact information for purchasing records from the Government Printing Office (''GPO''). The GPO is the primary source for purchasing official documents and electronic products from or relating to federal agencies.

The Commission is amending Rule 4.9(b)(3), 16 CFR 4.9(b)(3), to revise one public record category related to rulemaking and to include a new category of records to the miscellaneous list of public records set forth in Rule 4.9(b)(10), 16 CFR 4.9(b)(10). First, Rule 4.9(b)(3)(iii) is being revised to include on the Commission's public record other materials (in addition to transcripts) distributed to members of the public at workshops, hearings, or other public proceedings connected with a rulemaking. Second, the new category of records in Rule 4.9(b)(10)(xiv) includes transcripts or other materials that are distributed by staff at ''free-standing'' public workshops that are not part of a rulemaking process. These proposed revisions to Rule 4.9(b)(3) and (b)(10) do not require the creation of any materials, and merely provide that all materials distributed by staff at public proceedings be placed on the public record. Although such materials often are placed on the appropriate Public Record docket by staff, an explicit provision requiring that all such materials be placed on the Public Record will make such materials automatically available to the public. Because the public can access such materials without having to file a FOIA request, these rule changes likely will provide for more efficient use of FOIA staff and other agency resources.[1] In addition, FOIA search and review fees are greater for the public than the fees associated with public record requests. Accordingly, the Commission is revising its list of public records in Rule 4.9(b) to include these items.

FOIA Regulation

The Commission is amending Rule 4.11(a)(1)(i)(A) to include additional information about the different methods by which a proper FOIA request can be filed. The current regulation only provides instructions about how to mail a FOIA request. Because of advances in technology, we are including information about other methods by which proper FOIA requests can be filed. The amended section includes information about how to file FOIA requests through facsimile transmissions, the agency's FOIA email account, and the online FOIA request submission page on the FTC's Web site.

The Commission also is adding a new Rule 4.11(a)(1)(i)(C) to set forth the Commission procedures regarding the

[1] While these changes will likely reduce the requests made under FOIA, the Commission expects an increase in requests for public record materials. Nonetheless, placing documents on the public record and providing access through that process is generally less costly than the FOIA process. For example, the agency's search and review costs are often not recouped by fees (i.e., the FOIA statute does not allow recoupment of certain costs associated with many non-commercial requests), and thus often outweigh the agency's costs for public record access. Further, much of this material is already placed on the public record, and Commission staff often places such information on the Commission's Web site at www.ftc.gov for easy public availability. Thus, these proposed changes likely will decrease the overall cost to the Commission.

acknowledgment of receipt of a request. Acknowledging requests provides FOIA requesters with improved customer service, which is a goal described in the agency's annual strategic plans prepared in accordance with the Government Performance Results Act of 1993, as amended. In addition, this rule change helps prevent situations where requesters send the same request to the Commission multiple times because they are unsure whether their initial request was received.

The re-designated Rule 4.11(a)(1)(i)(D), formerly at 4.11(a)(ii)(A), provides additional specificity to assist requesters in reasonably describing the records sought and also asks for sufficient contact information from the requester for a response to be sent.

The re-designated Rule 4.11(a)(1)(i)(F), formerly at 4.11(a)(ii)(A), would give the requester ten calendar days to agree to pay estimated fees in situations where a fee waiver is not granted.

The Commission also is adding in the new Rule 4.11(a)(1)(i)(H), contact information for purchasing records from the Government Printing Office (''GPO''). This will assist the public since GPO is the primary source for purchasing official documents and electronic products from or relating to federal agencies.

The Commission is amending the re-designated Rule 4.11(a)(1)(ii)(A), previously Rule (a)(1)(iii), to provide additional guidance about when a FOIA request is considered properly filed. A request is properly filed after the agency receives any request for records in which the requester has reasonably described such records, agreed to pay fees necessary for a response, and provided sufficient contact information for a response to be sent. Although most requesters learn about when the Commission begins calculating its 20-day FOIA response deadline through oral conversations with FTC staff, the FOIA Office's response letter, or the FOIA page on the FTC Web site, the new rule sets forth this procedure to provide requesters with more advance notice.

The Commission also is amending the re-designated Rule 4.11(a)(1)(iii)(A), previously Rule 4.11(a)(1)(iv)(A), to provide notice to the public about the ''cut-off'' date that the agency uses for FOIA searches. The rule, as amended, explains that the Commission will search for materials that existed at the time the FOIA request was received by the agency. The agency already customarily provides actual notice of ''cut-off'' dates used for FOIA searches in its outgoing responses to FOIA requests. However, providing this explanation in the rule provides more advance constructive notice to FOIA requesters regarding the ''cut-off'' date.

The Commission is amending the re-designated Rule 4.11(a)(1)(iii)(C), previously Rule 4.11(a)(1)(iv)(C), to clarify that only certain records which are not easily copied or duplicated, such as tangible exhibits, are typically made available for on-site inspection.

The Commission is amending the re-designated Rule 4.11(a)(1)(iii)(D), previously Rule 4.11(a)(1)(iv)(D), to clarify procedures for notifying requesters when official files are missing. No section of the Commission's FOIA regulation directly addressed the procedures the agency must follow when the only copy of a responsive record is missing and that record should have been maintained in an official agency file according to the record disposition schedules that have been approved by the National Archives and Records Administration. To add a provision that addresses this situation, this amended rule now states that the requester will also be notified if a record that is part of an official agency file is lost or missing. If the person so requests, he will also be notified if the record should subsequently be located.

The Commission also is creating a new Rule 4.11(a)(2) that lists the contact telephone number for the FOIA Requester Service Center and includes information about the FTC's Public Liaison, which already must be on the agency's Web site. *See* 5 USC 552, as amended; EO 13392, ''Improving Agency Disclosure of Information,'' 70 FR 75373 (Dec. 19, 2005). Although this contact information is not required in the regulation by statute or executive order, the amendment comports with the general directive from Congress and the President to be as transparent and customer-friendly as possible.

The re-designated Rule 4.11(a)(3)(i)(A)(2), previously at Rule 4.11(a)(2)(i)(A)(2), clarifies that a requester has 30 days after the date of the letter to appeal the initial FOIA determination to the General Counsel. The re-designated Rule 4.11(a)(3)(i)(A)(2) also provides the General Counsel with discretion to allow extra time or flexibility in certain instances for a requester to file a FOIA appeal. For example, the increased security procedures in mail delivery have generally led to longer delivery times. The General Counsel needs the flexibility to assess such situations and determine whether to consider an appeal notwithstanding any delay in its receipt.

Finally, the re-designated Rule 4.11(a)(3)(i)(A)(4), previously at Rule 4.11(a)(2)(i)(A)(3), expands the methods for proper submission of FOIA appeals to include both facsimile and email submissions. This change allows for electronic options for submitting appeals and reflects Congressional and Presidential directives to make the FOIA process more user friendly. Independent reports have noted federal agencies' need to provide electronic means for communications, one of the main factors that prompted the 1996 E–FOIA amendments.[2]

The Commission certifies that the Rule amendments set forth in this notice do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals who are not ''small entities'' within the meaning of that Act. *Id.* at 601(6). In any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any, and the Act does not require an analysis for rules that are not subject to the notice-and-comment requirements of the Administrative Procedure Act, as discussed below. The Rule amendments also do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Furthermore, the rule amendments relate solely to agency practice and procedure, and thus are not subject to the notice and comment requirements of the Administrative Procedure Act. *See* 5 USC 553(b)(3(A) .

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

[2] For example, please see the National Security Archive's Knight Open Government Survey 2007 at *http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB216/e-foia_audit_report.pdf* where FTC was cited as one of the five top performers in implementing E–FOIA Amendments of 1996. The Web site (*http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB349/index.htm*) also contains links to more recent FOIA Audits in 2008, 2010, and 2011.

■ 2. Amend § 4.9 by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(iii), (b)(3)(iii), (b)(9), (b)(10)(xiv) and (xv), and by adding (b)(10)(xvi) to read as follows:

§ 4.9 The public record.

(a) * * *

(3) *Location.* All of the public records of the Commission are available for inspection at the principal office of the Commission on each business day from 9 a.m. to 5 p.m., and copies of some of those records are available at the regional offices on each business day from 8:30 a.m. to 5 p.m. Copies of records that the Commission is required to make available to the public electronically, pursuant to 5 U.S.C. 552(a)(2), may be obtained in that format from the Commission's Web site on the Internet, *http://www.ftc.gov/foia/readingroom.shtm.*

(4) *Copying of public records* (i) *Procedures.* Reasonable facilities for copying public records are provided at each office of the Commission. Subject to appropriate limitations and the availability of facilities, any person may copy public records available for inspection at each of those offices. Further, the agency will provide copies to any person upon request. Written requests for copies of public records shall be addressed to the Supervisor, Consumer Response Center, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue NW., Washington, DC 20580, and shall specify as clearly and accurately as reasonably possible the records desired. For records that cannot be specified with complete clarity and particularity, requesters shall provide descriptions sufficient to enable qualified Commission personnel to locate the records sought. In any instance, the Commission, the Supervisor of the Consumer Response Center, the General Counsel, the deciding official (as designated by the General Counsel), or the official in charge of each office may prohibit the use of Commission facilities to produce more than one copy of any public record, and may refuse to permit the use of such facilities for copying records that have been published or are publicly available at places other than the offices of the Commission.

* * * * *

(iii) *Records for sale at another government agency.* If requested materials are available for sale at another government agency, the requester will not be provided with copies of the materials but will be advised to obtain them from the selling agency. The U.S. Government Printing Office (''GPO''), the official bookstore for most U.S. Government publications, can be contacted at (202) 512–1800 or toll-free at (866) 512–1800, and at *ContactCenter@gpo.gov.* The GPO's online store can be accessed at *http://bookstore.gpo.gov* and mail orders should be directed to U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197–9000.

* * * * *

(b) * * *

(3) * * *

(iii) Transcripts of hearings of all rulemaking proceedings, all other materials that are distributed to the public during these proceedings, and written statements filed with or forwarded to the Commission in connection with these proceedings.

* * * * *

(10) * * *

(xiv) All transcripts or other materials that are distributed by staff at public workshops;

(xv) Other documents that the Commission has determined to place on the public record; and

(xvi) Every amendment, revision, substitute, or repeal of any of the foregoing items listed in paragraphs (b)(1) through (10) of this section.

* * * * *

■ 3. In § 4.11, revise paragraph (a) to read as follows:

§ 4.11 Disclosure requests.

(a) *Freedom of Information Act*—(1) *Initial requests*—(i) *Form and contents; time of receipt.* (A) A request under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, for access to Commission records shall be in writing and transmitted by one of the following means: by mail to the following address: Freedom of Information Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580; by facsimile transmission to (202) 326–2477; by email message to the FOIA email account at *foia@ftc.gov;* or by the form located at the FTC's FOIA Web site, *https://www.ftc.gov/ftc/foia.htm.*

(B) Failure to mark the envelope and the request in accordance with paragraph (a)(1)(i)(A) of this section, or the filing of a request for expedited treatment under paragraph (a)(1)(i)(G) of this section, will result in the request (or requests, if expedited treatment has been requested) as received on the date that the processing unit in the Office of General Counsel actually receives the request(s).

(C) *Acknowledgment of requests.* Once a FOIA request is properly received by the processing unit in the Office of the General Counsel, a letter acknowledging the receipt of the request shall be mailed to the requester if processing the request will likely take more than 5 business days.

(D) *Identifiability.* (*1*) A properly filed FOIA request shall reasonably describe the records sought with enough detail to enable the Commission to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought such as date, title, name, author, recipient, subject matter of the record, provide information regarding fees pursuant to § 4.8(c), and provide sufficient contact information for a response to be sent.

(*2*) A denial of a request may state that the description required by paragraph (a)(2)(ii)(A) of this section is insufficient to allow identification and location of the records.

(E) *Costs; agreement to pay costs.* Requesters will be charged search, review, duplication and other chargeable direct costs as prescribed by § 4.8 for requests under this section. All requests shall include a statement of the information needed to determine fees, as provided by § 4.8(c), and an agreement to pay fees (or a statement that the requester will not pay fees if a fee waiver is denied), as provided by § 4.8(d). Requests may also include an application for a fee waiver, as provided by § 4.8(e). An advance payment may be required in appropriate cases as provided by § 4.8(h).

(F) *Failure to agree to pay fees.* If a request does not include an agreement to pay fees, and if the requester is notified of the estimated costs pursuant to § 4.8(d)(3), the request will be deemed not to have been received until the requester agrees to pay such fees. If a requester declines to pay fees within ten calendar days and is not granted a fee waiver, the request will be denied.

(G) *Expedited treatment.* Requests may include an application for expedited treatment. Where such an application is not included with an initial request for access to records under paragraph (a)(1) of this section, the application may be included in any appeal of that request filed under paragraph (a)(3) of this section. Such application, which shall be certified by the requester to be true and correct to the best of such person's knowledge and belief, shall describe the compelling need for expedited treatment, including an explanation as to why a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, with respect to a request made by a person primarily engaged in

disseminating information, an explanation of the urgency to inform the public concerning actual or alleged Federal Government activity. The deciding official (as designated by the General Counsel) will, within 10 calendar days of receipt of a request for expedited treatment, notify the requester, in writing, of the decision to either grant or deny the request for expedited treatment, and, if the request is denied, advise the requester that this determination may be appealed to the General Counsel.

(H) *Records for sale at another government agency.* If requested materials are available for sale at another government agency, the requester will not be provided with copies of the materials but will be advised to obtain them from the selling agency. The U.S. Government Printing Office (''GPO''), the official bookstore for most U.S. Government publications, can be contacted at (202) 512–1800 (for those in the Washington, DC area), toll-free at (866) 512–1800 and at *ContactCenter@gpo.gov.* The GPO's online store can be accessed at *http://bookstore.gpo.gov* and mail orders should be directed to U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197–9000.

(ii) *Time limit for initial determination.* (A) The deciding official (as designated by the General Counsel) will, within 20 working days of the receipt of a request, or if applicable, the date that a request is properly filed, either grant or deny, in whole or in part, such request, unless the request has been granted expedited treatment in accordance with this section, in which case the request will be processed as soon as practicable. The date that a request is properly filed is the date on which the requester agrees to pay fees necessary for a response, reasonably describes the records sought, and provides sufficient contact information for a response to be sent. Any tolling of the 20-working day period will be done in compliance with the FOIA statute, as amended.

(B) Except in exceptional circumstances as provided in paragraph (a)(1)(ii)(C) of this section, the deciding official (as designated by the General Counsel) may extend the time limit by not more than 10 working days if such extension is:

(*1*) Necessary for locating records or transferring them from physically separate facilities; or

(*2*) Necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are sought in a single or series of closely related requests; or

(*3*) Necessary for consultation with another agency having a substantial interest in the determination, or for consultation among two or more components of the Commission having substantial subject matter interest therein.

(C) If the deciding official (as designated by the General Counsel) extends the time limit for initial determination pursuant to paragraph (a)(1)(ii)(B) of this section, the requester will be notified in accordance with 5 U.S.C. 552(a)(6)(B). In exceptional circumstances, when the request cannot be processed within the extended time limit, the requester will be so notified and provided an opportunity to limit the scope of the request so that it may be processed within such time limit, or to arrange an alternative time frame for processing the request or a modified request. ''Exceptional'' circumstances will not include delays resulting from a predictable workload of requests under this section. Unwillingness to make reasonable modifications in the scope of the request or to agree to an alternative time frame may be considered as factors in determining whether exceptional circumstances exist and whether the agency has exercised due diligence in responding to the request.

(D) If the deciding official (as designated by the General Counsel) reasonably believes that requests made by a requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise involve unusual circumstances, as specified in paragraph (a)(1)(ii)(B) of this section, and the requests involve clearly related matters, those multiple requests may be aggregated.

(E) If a request is not granted within the time limits set forth in paragraphs (a)(1)(ii)(A) and (B) of this section, the request shall be deemed to be denied and the requesting party may appeal such denial to the General Counsel in accordance with paragraph (a)(3) of this section.

(iii) *Initial determination.* (A) The deciding official (as designated by the General Counsel) will make reasonable efforts to search, using either manual or electronic means, for documents that exist as of the date of the receipt of a request for the requested records in electronic form or format, except when such efforts would significantly interfere with the operation of the Commission's automated information systems. Access will be granted to requested records, or any portions thereof, that must be made available under the Freedom of Information Act. The deciding official will determine whether access will be denied to records that are exempt under the Freedom of Information Act, 5 U.S.C. 552(b), unless the deciding official (as designated by the General Counsel) determines that such records fall within a category the Commission or the General Counsel has previously authorized to be made available to the public as a matter of policy and are otherwise not required to be undisclosed by law. Denials will set forth the reasons therefor and advise the requester that this determination may be appealed to the General Counsel if the requester believes either that the records are not exempt, or that the General Counsel should exercise discretion to release such records notwithstanding their exempt status. The deciding official (as designated by the General Counsel) will also provide a reasonable, good-faith estimate of the volume of any materials to which access is denied, unless providing such an estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) that was cited as a basis for withholding materials.

(B) The deciding official (as designated by the General Counsel) is deemed to be the sole official responsible for all denials of initial requests, except denials of access to materials contained in active investigatory files, in which case the Director or Deputy Director of the Bureau or the Director of the Regional Office responsible for the investigation will be the responsible official.

(C) Records to which access has been granted will be made available to the requester in any form or format specified by the requester, if the records are readily reproducible in that form or format, or can be converted to that form or format with a reasonable amount of effort. Certain records which are not easily copied or duplicated, such as tangible exhibits, will be made be available for inspection for a period not to exceed 30 days from date of notification to the requester unless the requester asks for and receives the consent of the deciding official (as designated by the General Counsel) to a longer period. Records assembled pursuant to a request will remain available only during this period and thereafter will be refiled. Appropriate fees may be imposed for any new or renewed request for the same records.

(D) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the requester shall be so notified. The requester will also be notified if a record that is part of an official agency file is lost or

missing. If the person so requests, he will also be notified if the record should subsequently be located.

(2) *FOIA Requester Service Center*—If a requester has questions or comments about the FOIA process, please call the FOIA Requester Service Center at (202) 326–2430 to either speak directly to a FOIA Case Officer or leave a voice message. A requester may ask the FOIA Case Officer to speak with the FOIA Public Liaison if there are concerns about the quality of the service received to an initial response, appeal or otherwise, during the process.

(3) *Appeals to the General Counsel from initial denials.* (i) *Form and contents; time of receipt.* (A)(*1*) If an initial request for expedited treatment is denied, the requester, at any time before the initial determination of the underlying request for records by the deciding official (as designated by the General Counsel) (or, if the request for expedited treatment was filed with any appeal filed under paragraph (a)(3)(i)(A)(*2*) of this section, at any time before the General Counsel's determination on such an appeal), may appeal the denial of expedited treatment to the General Counsel.

(*2*) If an initial request for records is denied in its entirety, the requester may, within 30 days of the date of the letter notifying the requester of that decision, appeal such denial to the General Counsel. If an initial request is denied in part, the time for appeal will not expire until 30 days after the date of the final letter notifying the requester that all records to which access has been granted have been made available. In unusual circumstances, the time to appeal may be extended by the General Counsel or his or her designee.

(*3*) [Reserved]

(*4*) The appeal shall be in writing and shall clearly refer to the adverse decision, or portions of the decision, being appealed; the appeal should include a copy of the initial request and a copy of the response to that initial request, if any. The appeal may be: mailed to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580; submitted by facsimile to (202) 326–3198; or emailed to *FOIAAppeal@ftc.gov.*

(B) If the appeal is mailed, failure to mark the envelope and the appeal in accordance with paragraph (a)(3)(i)(A)(*4*) of this section will result in the appeal (and any request for expedited treatment filed with that appeal) being treated as received on the actual date of receipt by the Office of General Counsel.

(C) Each appeal to the General Counsel that requests him or her to exercise his discretion to release exempt records shall set forth the interest of the requester in the subject matter and the purpose for which the records will be used if the request is granted.

(ii) *Time limit for appeal.* (A)(*1*) Regarding appeals from initial denials of a request for expedited treatment, the General Counsel will either grant or deny the appeal expeditiously;

(*2*) Regarding appeals from initial denials of a request for records, the General Counsel will, within 20 working days of the Office of General Counsel's receipt of such an appeal, either grant or deny it, in whole or in part, unless expedited treatment has been granted in accordance with this section, in which case the appeal will be processed expeditiously.

(B) The General Counsel may, by written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), extend the time limit for deciding an appeal by not more than 10 working days pursuant to paragraph (a)(1)(ii)(B) of this section, provided that the amount of any extension utilized during the initial consideration of the request under that paragraph will be subtracted from the amount of additional time otherwise available. Where exceptional circumstances do not permit the processing of the appeal within the extended time limit, the notice and procedures set forth in paragraph (a)(1)(ii)(C) of this section shall apply.

(iii) *Determination of appeal.* (A) The General Counsel has the authority to grant or deny all appeals and to release as an exercise of discretion records exempt from mandatory disclosure under 5 U.S.C. 552(b). In unusual or difficult cases, the General Counsel may, in his or her sole discretion, refer an appeal to the Commission for determination. A denial of an appeal in whole or in part will set forth the basis for the denial; will include a reasonable, good-faith estimate of the volume of any materials to which access is denied, unless providing such an estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) that was cited as a basis for withholding materials; and will advise the requester that judicial review of the decision is available by civil suit in the district in which the requester resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia.

(B) The General Counsel shall be deemed solely responsible for all denials of appeals, except where an appeal is denied by the Commission. In such instances, the Commission shall be deemed solely responsible for the denial.

* * * * *

By direction of the Commission, Chairman Leibowitz not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2013–04479 Filed 2–27–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 101

[Docket No. USCBP–2011–0031; CBP Dec. 13–2]

Modification of the Port Limits of Green Bay, WI

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations pertaining to CBP's field organization by expanding and revising the geographical limits of the port of Green Bay, Wisconsin. The port limits will be revised to refer to identifiable roadways and waterways rather than townships and will be extended to include the entire Austin Straubel Airport. The change will make the boundaries more easily identifiable to the public. The change is part of a continuing program to more efficiently utilize CBP's personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: *Effective Date:* April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Tina Loos, Operations Specialist, Chicago Field Office, Office of Field Operations, by phone at (312) 542–5754 or by email at *Tina.M.Loos@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** (76 FR 69688) on November 9, 2011, the Department of Homeland Security, U.S. Customs and Border Protection (CBP) proposed to amend the list of CBP ports of entry at 19 CFR 101.3(b)(1) to extend and revise the limits of the port of Green Bay, Wisconsin. CBP proposed to revise the port limits to refer to identifiable roadways and waterways rather than townships and to extend the port limits

to include the entire Austin Straubel Airport.

As explained in the NPRM, the port limits of Green Bay, Wisconsin originally consisted of the corporate limits of Green Bay, Wisconsin, but were expanded in 1958 to include the townships of Ashwaubenon, Allouez, Preble and Howard and the city of De Pere, all in the State of Wisconsin. *See* Treasury Decision (T.D.) 54597, effective May 27, 1958. CBP has included a map of the current port limits in the docket as ''Attachment A: Green Bay (Current).''

CBP proposed to amend the port limits of the port of Green Bay, Wisconsin because the boundaries of the listed townships are not easy to locate, one of the townships identified in T.D. 54597 (the Preble township) no longer exists, and due to an error, a portion of the Austin Straubel Airport is located outside the current port limits. CBP determined that this change would not result in a change in the service that is provided to the public by the port, nor would a change in the staffing or workload at the port be required. A map of the new port limits is included in the docket as ''Attachment B: Green Bay (Proposed).''

Interested parties were given until January 9, 2012, to comment on the proposed changes. No comments were received in response to the notice. Accordingly, CBP will adopt the proposal as set forth in the NPRM.

II. Conclusion

CBP is extending and revising the geographical limits of the port of Green Bay, Wisconsin. CBP believes that extending the geographical limits of the port of Green Bay, Wisconsin to include the entire Austin Straubel Airport and by revising the geographical limits to refer to identifiable roadways and waterways rather than townships will enable CBP to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. Therefore, the port of entry description of Green Bay, Wisconsin, will be revised as proposed in the NPRM.

III. Port Description of Green Bay, Wisconsin

The expanded and revised port limits of the Green Bay, Wisconsin port of entry, are as follows: Beginning at the point in the Sensiba State Wildlife Area where Lineville Rd. meets the shore of Lake Michigan, proceeding west on Lineville Rd. to the intersection with Westline Rd.; then south on Westline Rd. to the intersection with Glendale Ave.; then west on Glendale Ave. to the intersection with County Line Rd. (County Route U); then south on County Line Rd. to the intersection with Wisconsin State Route 29/32; then southeast on Route 29/32 to the intersection with Riverdale Dr. (County Route J); then southwest on Riverdale Dr. to the intersection with Hillcrest Dr.; then south on Hillcrest Dr. to the intersection with W Mason St. (State Route 54); then southwest on W Mason St. to the intersection with S Pine Tree Rd.; then south on S Pine Tree Rd. to the intersection with Orlando Dr.; then east on Orlando Dr. (which turns into Grant St.) to the intersection with 3rd St.; then north on 3rd St. to Main St. (State Route 32); then east on Main St. across the Fox River onto George St.; then east on George St. to the intersection with S Webster Ave.; then southwest on S Webster Ave. to Chicago St. (County Route G); then southeast on Chicago St. to the intersection with Monroe Rd. (County Route GV); then northeast on Monroe Rd. to the intersection with State Route 172; then east on State Route 172 to the intersection with Interstate 43; then northeast on I–43 to the intersection with Manitowoc Rd.; then southeast on Manitowoc Rd. to the intersection with Eaton Rd. (County Route JJ), then east on Eaton Rd. to the intersection with S Vandenberg Rd. (County Route OO/QQ); then north on S Vandenberg Rd. to the intersection with Humboldt Rd., then northwest on Humboldt Rd. to the intersection with N Northview Rd.; then north on N Northview Rd. to the intersection with Luxemburg Rd.; then west on Luxemburg Rd. to the intersection with Spartan Rd.; then north on Spartan Rd. to the intersection with State Route 54/57; then northeast and north on Route 57 to the intersection with Van Lanen Rd.; then west on Van Lanen to the point where Van Lanen Rd. meets the shore of Lake Michigan.

IV. Authority

This change is made under the authority of 5 U.S.C. 301; 19 U.S.C. 2, 66, and 1624; and section 403 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2178 (Nov. 25, 2002) (6 U.S.C. 203).

V. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563. The change is intended to revise the geographical boundaries of the Green Bay, Wisconsin, port of entry and make the boundaries more easily identifiable to the public. There are no new costs to the public associated with the rule, and the rule does not otherwise implicate the factors set forth in section 3(f) of Executive Order 12866. Accordingly, this rule has not been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000 people). This final rule does not directly regulate small entities. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. To the extent that all entities are able to more efficiently or conveniently access the facilities and resources within the expanded geographical area of the new port limits, this final rule should confer benefits to CBP, carriers, importers, and the general public. Because this final rule does not directly regulate small entities, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

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

D. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

VI. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this final rule is signed by the Secretary of Homeland Security.

Lists of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

Amendments to Regulations

For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b.

* * * * *

§ 101.3 [Amended]

■ 2. The list of ports in § 101.3(b)(1) is amended by removing from the ''Limits of Port'' column for Green Bay, Wisconsin, the present limits description ''Including townships of Ashwaubenon, Allouez, Preble, and Howard, and city of De Pere, T.D. 54597'' and adding ''CBP Dec. 13–2'' in its place.

Dated: February 22, 2013.

Janet Napolitano,

Secretary.

[FR Doc. 2013–04620 Filed 2–27–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1166–I]

RIN 1120–AB66

Compassionate Release; Technical Changes

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this interim rule, the Bureau of Prisons (Bureau) makes a minor change to remove an administrative level of review from the processing of a Compassionate Release request packet.

DATES: This rule is effective April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 353–8248.

SUPPLEMENTARY INFORMATION: In this interim rule, the Bureau of Prisons (Bureau) makes a minor change to remove an administrative level of review from the processing of a Compassionate Release request packet. Previously, under § 571.62, when a request for compassionate release was made, the request was first reviewed by the Warden of the facility where the inmate making the request is located. If the Warden, after reviewing the request, determines that the request warrants approval, the Warden needed to refer the matter in writing with recommendation to the Regional Director for the region in which the inmate was located. The Regional Director then had to conduct another review and approval before forwarding the request to the General Counsel's office in the Central Office of the Bureau of Prisons. We now remove the Regional Director level of review in order to expedite the process.

Under the Administrative Procedure Act (5 U.S.C. 553), there are exceptions to notice-and-comment rulemaking for ''(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

Here, this change falls under both (A) and (B): It is a rule of agency procedure or practice, as it is an internal level of administrative review of an inmate request. Additionally, notice and comment is unnecessary because those most likely to comment—inmates—will find it advantageous to have the expedited review allowed by this change. Further, Regional Director review is unnecessary and repetitive. All the factors reviewed and considered in a Compassionate Release request are reviewed and evaluated anew at the General Counsel level. The Bureau also believes adequate and sufficient review of inmate requests is already served by Warden, General Counsel and Director review of each request. For these reasons, we finalize this change without previous notice and comment under the exceptions allowed by the Administrative Procedure Act.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this regulation has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General and the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Charles E. Samuels, Jr.

Director, Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 571, chapter V, subchapter D, as follows.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. Revise the authority citation for 28 CFR part 571 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568 and 3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509 and 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1–1.10; DC Official Code sections 24–101, 24–461 24–465, 24–467, and 24–468.

Subpart G—Compassionate Release (Procedures for the Implementation Of 18 U.S.C. 3582(C)(1)(A) and 4205(G))

§ 571.61 [Amended]

■ 2. In § 571.61, paragraph (b), remove the words ''Office or at a Regional'' after the word ''Central''.

■ 3. In § 571.62, revise paragraph (a) to read as follows:

§ 571.62 Approval of request.

(a) The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.

(1) The Warden shall promptly review a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A). If the Warden, upon an investigation of the request determines that the request warrants approval, the Warden shall refer the matter in writing with recommendation to the Office of General Counsel.

(2) If the General Counsel determines that the request warrants approval, the General Counsel shall solicit the opinion of either the Medical Director or the Assistant Director, Correctional Programs Division depending upon the nature of the basis of the request. With this opinion, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision.

(3) If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 4205(g), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Bureau of Prisons to reduce the minimum term of the inmate's sentence to time served. If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 3582(c)(1)(A), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Director of the Bureau of Prisons to reduce the inmate's term of imprisonment to time served.

* * * * *

■ 4. In § 571.63, revise paragraph (a) to read as follows:

§ 571.63 Denial of request.

(a) When an inmate's request is denied by the Warden, the inmate will receive written notice and a statement of reasons for the denial. The inmate may appeal the denial through the Administrative Remedy Procedure (28 CFR part 542, subpart B).

* * * * *

[FR Doc. 2013–04589 Filed 2–27–13; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–1021]

RIN 1625–AA09

Drawbridge Operation Regulation; New Haven Harbor, Quinnipiac and Mill Rivers, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of three bridges across the Quinnipiac and Mill Rivers at New Haven, Connecticut, to relieve the bridge owner from the burden of crewing the bridges during time periods when the bridges seldom receive requests to open while still providing for the reasonable needs of navigation.

DATES: This rule is effective April 1, 2013.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–1021 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1021 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, 212–668–7165, *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On January 13, 2010, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations New Haven Harbor, Quinnipiac and Mill Rivers,'' in the **Federal Register** (75 FR 1738). We received no comments on the proposed rule. No public meeting was requested, and none was held.

On December 26, 2012, we published a notice of proposed rulemaking; Reopening Comment Period, entitled ''Drawbridge Operation Regulations New Haven Harbor, Quinnipiac and Mill Rivers,'' in the **Federal Register** (77 FR 75917). We received no comments on the proposed rule; Reopening Comment Period. No public meeting was requested, and none was held.

B. Basis and Purpose

The Ferry Street Bridge at mile 0.7, across the Quinnipiac River has a vertical clearance in the closed position of 25 feet at mean high water and 31 feet at mean low water.

The Grand Avenue Bridge at mile 1.3, across the Quinnipiac River has a vertical clearance in the closed position of 9 feet at mean high water and 15 feet at mean low water.

The Chapel Street Bridge at mile 0.4, across the Mill River has a vertical clearance of 7 feet at mean high water and 13 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.213.

In 2009, the City of New Haven requested a change to the drawbridge operation regulations governing the Ferry Street Bridge at mile 0.7, across Quinnipiac River, the Grand Avenue Bridge at mile 1.3, across the Quinnipiac River, and the Chapel Street Bridge, mile 0.4, across the Mill River, to reduce the burden of crewing these bridges during time periods when historically there have been few requests to open the bridges.

As a result, the Coast Guard authorized a temporary test deviation (74 FR 27249) on June 9, 2009, to test the proposed changes to the drawbridge operation regulations to help determine if a permanent change to the regulations would satisfactorily accomplish the bridge owner's goal and continue to meet the reasonable needs of navigation.

The test period was in effect from May 1, 2009 through October 26, 2009. There were no adverse impacts to navigation reported during the test period.

As a result of the test deviation we published a notice of proposed rulemaking entitled, ''Drawbridge Operation Regulation; New Haven Harbor, Quinnipiac and Mill Rivers, CT,'' in the **Federal Register** (75 FR 1738) on January 13, 2010. The comment period for the NPRM closed on February 12, 2010. We received no comments in response to our NPRM. No public meeting was requested, and none was held.

The promulgation of the final rule was delayed due to the construction of the I–95 Pearl Harbor Memorial Bridge across the Quinnipiac River, at New Haven, Connecticut, which required land traffic detours impacting all three bridges during the initial phase of the new bridge construction. The Coast Guard delayed publication of the final rule to help facilitate vehicular traffic detours.

On December 26, 2012, because several years had passed since we first solicited comments on this rulemaking, we reopened the notice of proposed rulemaking with a request for comments to provide notice and opportunity for the public to comment on this rulemaking before making the proposed changes permanent. We received no comments in response to the reopening of the NPRM and request for comments.

The existing drawbridge operation regulations, listed at 33 CFR 117.213, authorize a roving crew concept that requires the draw of the Ferry Street Bridge to open on signal from October 1 through April 30, between 9 p.m. and 5 a.m., unless the draw tender is at the Grand Ave or Chapel Street bridges, in which case a delay of up to one hour in opening is permitted.

The bridge owner would like to extend the above roving crew concept to be in effect year round.

The waterway users are seasonal recreational craft, commercial fishing and construction vessels.

The regulation governing the Tomlinson Bridge at mile 0.0, across the Quinnipiac River, will not be changed by this rulemaking.

C. Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking; reopening of comments. As a result, no changes have been made to this final rule.

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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be a ''significant'' regulatory action under those Orders because the above drawbridge operation schedule is being modified during periods of time with few requests for bridge operation. A prior test period of these new regulations met the needs of those mariners transiting the area.

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 received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because we already tested this rulemaking from May 1, 2009 through October 26, 2009, with satisfactory results and no complaints from the waterway users in 2010 and 2012.

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. 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.

7. 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.

8. 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.

9. Protection of Children

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

10. 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.

11. Energy Effects

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

12. Technical Standards

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

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule was tested from May 1, 2009 through October 26, 2009. Satisfactory results were received from the test insofar as there were no adverse impacts to navigation. In addition, we received no objection to the operation schedule during or after the test period ended and found that the operation schedule met the reasonable needs of navigation. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.213 to read as follows:

§ 117.213 New Haven Harbor, Quinnipiac and Mill Rivers.

The draws of the Tomlinson Bridge, mile 0.0, the Ferry Street Bridge, mile 0.7, and the Grand Avenue Bridge, mile 1.3, across the Quinnipiac River, and the Chapel Street Bridge, mile 0.4, across the Mill River, shall operate as follows:

(a) The draw of the Tomlinson Bridge at mile 0.0, across the Quinnipiac River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m., noon to 12:15 p.m., 12:45 p.m. to 1 p.m., and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessel traffic.

(b) The draw of the Ferry Street Bridge at mile 0.7, across Quinnipiac River, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessel traffic. From 9 p.m. to 5 a.m. the draw shall open on signal if at least a one-hour advance notice is given by calling the number posted at the bridge.

(c) The draw of the Grand Avenue Bridge at mile 1.3, across the Quinnipiac River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessel traffic. From 9 p.m. to 5 a.m. the draw shall open on signal if at least a one-hour advance notice is given by calling the number posted at the bridge.

(d) The draw of the Chapel Street Bridge at mile 0.4, across the Mill River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessel traffic. From 9 p.m. to 5 a.m. the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

Dated: February 14, 2013.

Daniel B. Abel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2013–04621 Filed 2–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2012–1049]

RIN 1625–AB97

Implementation of MARPOL Annex V Amendments

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is publishing an interim rule with request for comments to conform regulations to the adopted MARPOL Annex V amendments which entered into force on January 1, 2013. The International Convention for the Prevention of Pollution from Ships (MARPOL) Annex V (Garbage) amendments prohibiting the discharge of garbage from vessels unless expressly allowed were adopted by the International Maritime Organization's Marine Environmental Protection

Committee in July 2011 and implemented domestically through the Act to Prevent Pollution from Ships. Under this rule, the only allowed discharges will be certain food wastes, cargo residues, cleaning agents and additives in wash waters, and animal carcasses.

DATES: This interim rule is effective April 1, 2013. Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 29, 2013 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2012–1049 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call LCDR Rodney Wert, Coast Guard; email *rodney.wert@uscg.mil*, telephone 202–372–1434. If you have questions on viewing or submitting material to the docket, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–1049), 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, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone 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* and insert ''USCG–2012–1049'' in the ''Search'' box. Click on ''Submit a Comment'' then in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them 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 this rule based on your comments.

B. 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*, insert ''USCG–2012–1049'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. 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).

This rule also edits § 151.57, ''Garbage management plans.'' However, these edits do not change any of the specific information that is currently required. Therefore, there will be no change to the collection burden, as estimated in the Information Collection Review (ICR) ''Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping.'' This ICR was approved by the Office of Management and Budget under control number 1625–0072 and it expires on July 31, 2014. Prior to the expiration, the Coast Guard will publish requests for comments. Information received from the public in that comment period may be used to update the ICR.

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one docket using one of the methods specified under **ADDRESSES**. In your request, 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**.

II. Abbreviations

APPS The Act to Prevent Pollution From Ships
DHS Department of Homeland Security
E.O. Executive Order
FR **Federal Register**
IMO International Maritime Organization
IR Interim Rule
ISM International Safety Management System
MARPOL The International Convention for the Prevention of Pollution from Ships
MEPC Marine Environment Protection Committee
NPRM Notice of proposed rulemaking
U.S.C. United States Code
WCR Wider Caribbean Region

III. Regulatory History

The Coast Guard is issuing this 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 the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex V (Garbage) restrictions on the discharge of garbage have already been implemented by the Act to Prevent Pollution from Ships (APPS). Publishing an NPRM and delaying the effective date of the change to 33 CFR part 151 is unnecessary because the change is a conforming amendment required by existing authority and because an opportunity for public comment has already been provided.

This rulemaking restates a legal responsibility already in effect under MARPOL and APPS (33 U.S.C. 1901, et seq.), which is the U.S. authority for implementing MARPOL. Through APPS, the United States accepts all modifications and amendments made to Annex V as domestic law upon the amendments' entry into force ((33 U.S.C. 1901(a)(5)); *see also* section 1907(a) (requiring compliance with MARPOL)). This rulemaking will revise domestic regulations at 33 CFR part 151 to accurately reflect U.S. requirements under MARPOL Annex V.

The public has had several opportunities to comment on the MARPOL Annex V amendments that will be incorporated in Coast Guard regulations under this rulemaking. Beginning in 2006, the United States worked with the 170 member states of the International Maritime Organization (IMO) Marine Environmental Protection Committee (MEPC) for over 5 years to amend MARPOL Annex V and greatly reduce the discharge of ship-generated garbage into the sea. A Coast Guard official serves as head of the United States Delegation to the MEPC. The Coast Guard held a public meeting in Washington, DC prior to each MEPC meeting to present the United States' position(s) on the amendments and to receive public comments which would be taken into consideration when finalizing the U.S. negotiating positions. There were no adverse public comments received prior to the July 2011 MEPC 62 (the meeting where the amendments were formally adopted by MEPC). Previous MARPOL Annex V-related regulatory projects, including the Wider Caribbean Region (WCR) special area regulation, similarly did not receive any adverse comments (77 FR 19537, April 2, 2012).

Additionally, the original APPS regulations in 33 CFR parts 151, 155, and 158 were implemented through a full informal rulemaking process, including an Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 23884, June 24, 1988), an Interim Rule (IR) with Request for Comments (54 FR 18384, April 28, 1989), and a Final Rule (55 FR 35986, September 4, 1990).

IV. Basis and Purpose

MARPOL consists of 20 articles and Annexes I through VI. The subject of this rulemaking, MARPOL Annex V, regulates the discharge of garbage from ships. APPS implements MARPOL into domestic law, requiring the Secretary of the Department in which the Coast Guard is operating to administer and enforce the various Annexes of MARPOL. Through APPS, the United States accepts any modifications or amendments to MARPOL as domestic law (33 U.S.C. 1901(a)(5), see also section 1907(a) (requiring compliance with MARPOL)). In July 2011, the IMO MEPC adopted amendments to MARPOL Annex V which entered into force January 1, 2013.

MARPOL applies to the oceangoing vessels of all signatory flag administrations. Domestically, APPS requires all vessels subject to MARPOL to be in compliance with its provisions while in U.S. navigable waters. APPS goes further and specifically applies the provisions of Annex V to U.S. navigable waters as well as all other waters and vessels over which the United States has jurisdiction, including U.S. vessels in U.S. internal waters (33 U.S.C. 1901(b)).

Because APPS implements MARPOL and any modifications or amendments thereto, regulations are not required in order to carry out the provisions of MARPOL on signatory flag state vessels in U.S. waters. MARPOL, however, requires signatory states to apply the requirements equally to all vessels so no more favorable treatment is given to non-signatory vessels (MARPOL, Article 5(4)). Under MARPOL, as implemented by APPS, federal regulations must be promulgated to ensure compliance of non-signatory vessels to MARPOL standards while in U.S. navigable waters. This rulemaking meets this U.S. obligation under MARPOL as implemented by APPS and revises 33 CFR part 151 accordingly.

V. Discussion of the Interim Rule

MARPOL provisions, as implemented through APPS, are key elements of the Coast Guard's prevention and compliance programs. The domestic Annex V conforming regulations are located in 33 CFR part 151.

In July 2011, the IMO MEPC adopted amendments to MARPOL Annex V which entered into force January 1, 2013. The United States played a lead role at MEPC over the last several years in the development of the amendments to Annex V. These amendments reduce the types of garbage that can be discharged into the sea by establishing a general prohibition on discharges of garbage into the sea. Under prescribed conditions, exceptions are provided for food wastes, cargo residues, cleaning agents and additives in wash waters, and animal carcasses.

Part 151 of Title 33 of the CFR will be revised to conform to the amendments. The primary revisions as the subject of this rulemaking are (1) Updating operational requirements, (2) adding new definitions, and (3) replacing placards. Table 1 presents a summary of the changes to garbage discharge practices.

TABLE 1—SUMMARY OF CHANGES TO GARBAGE DISCHARGE PRACTICES

Topic	Summary of change	Type of change (see list above)
Discharge of garbage	Prohibition on the discharge of garbage, with proscribed exceptions.	(1) Operational.
Garbage, edit definition of the term	Added plastics, discharge of plastics currently prohibited anywhere.	(2) New definition.
	Added cargo wastes	(2) New definition.
	Added cooking oils	(1) Operational.
	Added fishing gear	(2) New definition.

TABLE 1—SUMMARY OF CHANGES TO GARBAGE DISCHARGE PRACTICES—Continued

Topic	Summary of change	Type of change (see list above)
	Added animal carcasses	(1) Operational.
Food wastes inside special areas	Removed WCR exemption to align with the 2012 WCR rulemaking.	(2) New definition.
	All food wastes must be comminuted	(1) Operational.
Cleaning agents	Cleaning agents may be discharged if not harmful to the environment.	(1) Operational.
Placards	Change minimum size	(3) Replacing placards.
	Remove 1997 grandfathering	

Operational Requirements

This rulemaking aligns the CFR with MARPOL Annex V, and incorporates the general prohibition on discharges of garbage into the sea. Also included in this rulemaking are exceptions, under prescribed conditions, that are provided in MARPOL Annex V for food wastes, cargo residues, cleaning agents and additives in wash waters, and animal carcasses. Conditions for discharge contain references to operational requirements, such as that the vessel must be en route and a minimum distance from land or ice shelves, or technical requirements, such as cleaning agents must not be harmful to the marine environment.

Definitional Changes

This rulemaking revises the definitions in 33 CFR 151.05 to align with the MARPOL V amendments and provide clarity. In Table 2 we list the revised terms and put them into three categories:

- *New Definitions:* Terms that are added to conform to the MARPOL Annex V amendments.
- *Revised Definitions:* Terms that already exist in the CFR, but the definitions are revised to conform to the MARPOL Annex V amendments to the requirements and provide consistency within the regulatory text.
- *Reorganized Definitions:* The definitions of these terms are unchanged, but they are now included in definitions of other terms.

TABLE 2—SUMMARY OF DEFINITIONAL CHANGES

New term	Old term	Remarks
Cargo	Cargo	Revised definition.
Cargo Residues	N/A	New definition.
Cooking Oil	N/A	New definition.
Domestic Wastes	Domestic Wastes	Revised definition.
En Route	N/A	New definition.
Fishing Gear	N/A	New definition.
Fixed or floating drilling rig or other platform	N/A	New definition.
Food Wastes	Victual Wastes	Revised definition.
Garbage	Garbage	Revised definition.
Graywater	Graywater	Revised definition.
Harmful to the marine environment	N/A	New definition.
Incinerator Ashes	N/A	New definition.
International Maritime Organization (IMO) Guidelines	N/A	New definition.
MARPOL	MARPOL 73/78	Revised definition.
Nearest Land	Nearest Land	Revised definition.
Operational Wastes	Cargo Associated Wastes	Revised definition.[1]
	Maintenance Wastes	
	Oil Rags	
Plastics	Plastics	Revised definition.
Recycling	N/A	New definition.

[1] Formerly separate definitions of "Cargo Associated Wastes,","Maintenance Wastes," and "Oil Rags," now included in "Operational Wastes."

Replacing Placards

Section 151.59 contains the requirements for the posting of placards that summarize the garbage restrictions of Annex V. Revisions to placard regulatory requirements include:

- Moving the applicability requirements of § 151.59(a) to § 151.51, *Applicability,* for ease of reference;
- Revising applicability to include non-U.S.-flagged vessels that are 40 ft (12 m) or more;
- Changing the size of the placard to at least 20 cm (8 in) by 12.5 cm (5 in);
- Revising § 151.59(e)(2)(ii) to remove the grandfathering provision for placards installed on vessels prior to May 7, 1997; and
- Various technical edits made to align with revisions to terminology and to clarify requirements.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review.

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This IR has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the IR has not been reviewed by the Office of Management and Budget. A draft Regulatory Assessment follows:

As stated in section IV., ''Basis and Purpose,'' this rulemaking is non-discretionary and intended to meet our obligations as a signatory to MARPOL, as implemented by APPS. This rulemaking meets the requirement of ensuring compliance of non-signatory vessels to MARPOL standards while operating in U.S. navigable waters. See MARPOL, Article 5(4). Additionally, this rulemaking is necessary to conform Coast Guard regulations to the MARPOL Annex V amendments. As described in the ''Operational Requirements'' part of section V., ''Discussion of the Interim Rule'', the Annex V amendments reduce the types of garbage that can be discharged into the sea by establishing a general prohibition on discharges of garbage from ships into the sea with exceptions for certain types of garbage under prescribed conditions. Affected vessels will be required to replace their garbage discharge placards with new ones that reference the amendments. Table 3 displays a summary of our analysis.

TABLE 3—SUMMARY OF AFFECTED POPULATION, COST SAVINGS, AND BENEFITS

Category	Estimate
Affected Population	Owners and operators of 12,277,662 commercial and recreational vessels.
Costs discounted at 7% interest rate 10 year total	$2,878,879
Annualized	$409,888
Benefits	• Align Coast Guard regulations with APPS implementation of MARPOL Annex V amendment of 2011. • Fulfill treaty obligations as signatory to MARPOL. • Improve enforcement posture to maintain and enhance environmental quality.

Affected Population

This rulemaking is applicable to all U.S.-flagged vessels, wherever they operate, and non-U.S.-flagged vessels operating in the navigable waters or Exclusive Economic Zone of the United States, with limited exceptions. We divided the U.S.-flagged population into those in domestic and international trade. The domestic population consists of four groups: recreational, commercial, passenger, and public/research/school. The recreational population is approximately 12,173,935 vessels.[1] Data on non-recreational vessels were extracted from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database and are described below:

• Domestic Commercial—86,871 vessels: Container ships, freight ships, tank vessels, offshore supply vessels, commercial fishing vessels, and other similar vessels that carry cargo or support the shipping industry.

• Domestic Passenger—15,855 vessels: Passenger vessels, both self-propelled and barges.

• Domestic Public/Research/School—1,001 vessels: Vessels used by public institutions, research organizations, and sailing schools.

• International: Using MISLE's SOLAS certificate history data, we identified 146 U.S.-flagged vessels engaged in international trade.

Table 4 shows the U.S.-flagged portion of the affected population by trade type and vessel service group within the domestic trade type.

TABLE 4—AFFECTED POPULATION—U.S.-FLAGGED VESSELS BY VESSEL SERVICE GROUP

Trade type	Service group	Vessels	
Domestic	Commercial	86,871	
	Passenger	15,855	
	Public/Research/School	1,001	
	Recreational	12,173,789	
	Total		12,277,516
International	Total		146
Total			12,277,662

Source: U.S. Coast Guard

Current Practices

This rulemaking does not affect the existing prohibition under APPS on discharge of all types of garbage within three nautical miles of land. The prohibition covers all manned vessels, commercial and recreational, that transit U.S. inland waterways and near-shore waters.

Much of the maritime community has developed voluntary garbage management procedures that are consistent with the Annex V amendments. The regulatory analysis for the Wider Caribbean Region (WCR) rulemaking analyzed current garbage management and discharge practices across sectors (77 FR 19537, April 2, 2012). A summary of these findings follows:

• *Cruise Line Sector.* Using guidelines published by the Cruise Line

[1] U.S. Coast Guard, Boating Safety Division, 2011 Boating Statistics Report, Table 37, Registration Data, page 56 (*http://www.uscgboating.org/assets/1/Publications/2011BoatingStatisticsreport.pdf*).

International Association, this industry has incorporated garbage and waste management practices into cruise ships' safety management systems that meet or exceed the requirements of MARPOL and U.S. regulations.

• *Commercial Fishing Vessel Sector.* Commercial Fishing Vessels are covered by MARPOL. However, due to their operations, in that they do not carry freight and passengers, most of the requirements of Annex V, such as those regarding dunnage, and paper, will not be applicable to this sector. One amendment adds fishing gear to the definition of garbage, but the industry was informed about this requirement in the guidelines published by IMO in 2006. The requirements for other types of garbage, such as plastics and unground food wastes, are unchanged. Thus, we anticipate that commercial fishing vessels are already in compliance with this rulemaking.

• *Other Commercial Vessels.* The 146 vessels known to be engaged in international trade are already subject to the strict restrictions that apply when transiting the Special Areas designated by MARPOL and the waste management requirements of the IMO's International Safety Management System (ISM) Code. Within the Gulf of Mexico Special Area, U.S. vessels subject to this rulemaking, along with all other vessels transiting the Area, already need to comply with its restrictions. Compliance with these MARPOL V amendments is further reinforced through the use of safety management systems (SMSs) such as the ISM or the Responsible Carrier Program of the American Waterways Operators. These SMSs have as their base requirement compliance with all federal and state regulations, and then impose additional requirements for safety, health, and environmental protection. Compliance with the SMSs is determined via company and third-party audits.

• *Recreational Vessels.* The voyages of recreational vessels usually are of short duration and occur in the inland and coastal waters of the United States, where discharge of garbage is prohibited. This long-standing regulatory prohibition is reinforced by education programs of various state and local governments, and by boating associations. The Boat U.S. Foundation's ''Stash the Trash'' program is a leading example. Recreational vessels in general do not generate large amounts of garbage and the standard practice is to retain garbage on board until returning to port where the garbage is deposited in trash receptacles on shore. As these practices meet requirements of this rule, we anticipate that owners and operators of recreational vessels will incur no additional costs.

The regulatory analysis for the WCR rulemaking concluded that current practices by industry and the recreational boating community as they operate in waters under the jurisdiction of the U.S. exceed regulatory minimums, and that implementing the WCR would not result in any additional costs. In summary, the Coast Guard concludes that the maritime community has a longstanding knowledge of the provisions contained in the MARPOL Annex V amendments and many sectors have already taken actions to meet or exceed those requirements.

Costs

Cost analyses of the three areas of changes follow.

Operational Requirements

Certain provisions of the IR directly address on-board practices and operations. Table 5 expands upon the summary of changes provided in Table 1, adding a brief description of the economic impact.

TABLE 5—CHANGES AND ECONOMIC IMPACTS

Topic	Summary of change	Economic impact
Discharge of garbage	Prohibition on the discharge of garbage, with proscribed exceptions.	No cost. Align with MARPOL V amendments.
Garbage, edit definition of the term	Added plastics	No cost, current practice.
	Added cargo wastes, cooking oils	No cost, technical edits. Clarify text.
	Added fishing gear	No cost, current practice.
	Added animal carcasses	Impacted vessels are those in certain international trade routes. No cost to affected population.
Food wastes inside special areas	Removed WCR exemption	No cost; align with WCR special area rule.
	All food wastes must be comminuted	No cost, current practice.
Cleaning agents	Cleaning agents may be discharged if not harmful to the environment.	No cost, markets have already responded.[2]
Placards	Change minimum size. Remove 1997 grandfathering.	Cost to replace placards, discounted at 7 percent: $2,878,878 over 10 years; $409,888 annualized.

Definitional Changes

As described in section ''*V. Discussion of the Interim Rule,*'' 33 CFR 151.05, *Definitions,* is revised to include new definitions and revisions to existing definitions to align with the amendments to MARPOL Annex V. The editorial changes produce no additional costs to the affected population. They have the qualitative benefit of adding clarity and consistency to the regulatory text.

Replacing Placards

The current version of MARPOL Annex V (§ 151.59(d)(6)) states that: ''[P]lacards installed on vessels before May 7, 1997, need not be replaced; and existing stocks of placards, containing previous language, may be used.'' The new amendments remove this exemption, so all subject vessels will need new placards. The current version of § 151.59 states that placards are required on U.S.-flagged vessels that are 26 feet or more in length. The amendments move the text that defines applicability to § 151.51(e), but they do not change the minimum vessel length threshold of 26 feet.

When the MARPOL Annex V amendments became effective on January 1, 2013, the owners and operators of non-U.S.-flagged vessels in international trade joined the affected population that needs new placards. However, they will need the new placards to remain in compliance with MARPOL, regardless of whether they

[2] As examples, see *www.drew-marine.com/cleaning-coatings.html, www.wcisupplies.com/nibio/nibio.html, and www.wilhelmsen.com/services/maritime/companies/buss/marine chemicals/products/Pages/products.aspx.*

visit the U.S. or any other country. Therefore, the cost of the replacement placards for non-U.S.-flagged vessels is outside the scope of this analysis. The 146 U.S.-flagged vessels known to be engaged in international trade also need to comply with the placard requirement of MARPOL Annex V. As stated earlier, we believe that these vessels are currently in compliance with MARPOL V, regardless of the status of this rulemaking. We therefore did not include the costs of placards on these vessels as part of the costs of this IR.

In addition, other vessels within the scope of this costs analysis are U.S.-flagged vessels that engage in domestic trade or travel only, that are 26 feet or more in length. As described previously, the application of MARPOL Annex V to domestic vessels in domestic trade is not a discretionary action on the part of the Coast Guard as APPS specifically applies the provisions of Annex V to U.S. navigable waters, as well as to all other waters and vessels over which the U.S. has jurisdiction, including U.S. vessels in U.S. internal waters (33 U.S.C. 1901(b)).

To obtain the number of vessels subject to the placard requirement, that is, those 26 feet or longer, we used the same Coast Guard sources used to produce the domestic population of 12,277,516 vessels listed in Table 3. The 2011 Boating Statistics Report contains a break-out by various categories of lengths.[3] Aggregating the ones 26 feet or more produced a count of 918,875 recreational vessels. The MISLE extract on non-recreational vessels contained length data for each vessel. We used this length data to identify 100,095 non-recreational vessels 26 feet or more in length by service group. Together, there are 1,018,970 U.S.-flagged vessels subject to the placard requirement, as shown in Table 6.

TABLE 6—POPULATION OF VESSELS SUBJECT TO PLACARD REQUIREMENT, BY SERVICE GROUP

Vessel group	Vessels
Commercial	83,545
Passenger	15,573
Public/Research/School	977
Recreational	918,875
Total	1,018,970

These vessels can have many areas where garbage is generated and may need multiple placards. Based on information from Coast Guard personnel who have inspected, examined, or observed these vessel types, we estimated the number of placards for these vessels by constructing the following categories, based on length. Table 7 shows the assignment of placards by vessel length category.

TABLE 7—ESTIMATE OF PLACARDS BY VESSEL LENGTH

Vessel length	Placards
Less than 100 feet	1
100–199.9 feet	2
200–299.9 feet	3
300 feet or more	4

For each vessel in the subject population, we assigned the number of placards using the same vessel length variable used to determine if it qualified to be in the subject population. The results of these calculations were aggregated by service group and are displayed in Table 8. To obtain the number of vessels in a service group requiring a particular number of placards, one must divide the entry (number of placards per service group) by the number of placards.

TABLE 8—COUNT OF VESSELS AND PLACARDS

Service group	Vessel count	Number of placards per service group				
		1	2	3	4	Total placards
Commercial	83,545	77,865	9,544	2,610	152	90,171
Passenger	15,573	14,889	1,060	279	244	16,472
Public/Research/School	977	778	230	186	88	1,282
Recreational	918,875	918,875	0	0	0	918,875
Total	1,018,970	1,012,407	10,834	3,075	484	1,026,800

• This count includes 934 vessels with recorded length of 0. This apparently marks missing data and to include them in the analysis we assigned them in the 1 placard group.

The data indicates that 99% of the vessels (1,012,407 out of 1,018,970) in the subject population are less than 100 feet in length and will need only one placard.

Based on data from an Internet search, we derived a unit cost of $3 per placard.[4] Table 9 displays the population, cost input, and total costs.

TABLE 9—COST OF REPLACING PLACARDS

Service group	Vessels	Placards	Cost
Commercial	83,545	90,171	$270,513
Passenger	15,573	16,472	49,416
Public/Research/School	977	1,282	3,846
Recreational	918,875	918,875	2,756,625
Total	1,018,970	1,026,800	3,080,400

[3] U.S. Coast Guard, Boating Safety Division, 2011 Boating Statistics Report, Table 37, Registration Data, page 56 (*http://www.uscgboating.org/assets/1/Publications/2011BoatingStatisticsreport.pdf*).

[4] We are not aware of new placards yet on the market. West Marine (*www.westmarine.com,* enter part # 8788986 in the search tool) has a set of 3 MARPOL placards, including one for Annex V, with soon to be obsolete language, for example $6.99. We use that to estimate per unit cost of a new placard at $6.99/3=$2.33, rounded up to $3.00.

Please note that any vessels built in subsequent years are required to have a placard under the current regulation. Therefore, the only cost associated with this IR is the one-time cost for existing vessels to replace their placards. Table 10 displays the 10-year cost analysis, showing undiscounted costs and discounted costs at 7 percent and 3 percent rates.

TABLE 10—10-YEAR COST SCHEDULE, UNDISCOUNTED AND DISCOUNTED COSTS

Year	Undiscounted costs	Discounted costs	
		7%	3%
1	$3,080,400	$2,878,879	$2,990,680
2–10	0	0	0
Total	3,080,400	2,878,879	2,990,680
Annualized		409,888	350,599

In summary, this rulemaking is mandated under APPS to incorporate the MARPOL Annex V amendments into Coast Guard regulations. Our regulatory analysis identified the only cost item as the replacement of existing placards. The placards must be replaced as they contain language that is inconsistent with the MARPOL Annex V amendments. The implementation of this IR will align the text of the placards and the CFR with the MARPOL Annex V amendments, as implemented by APPS. No further costs are incurred and no alternatives are available to avoid modifying the placards that would enable vessels to comply with APPS and by extension MARPOL. This IR therefore, is the least cost alternative for the Coast Guard to fulfill the statutory requirements of APPS.

Benefits

The MARPOL Annex V amendments came into effect January 1, 2013 and are automatically implemented by APPS. After this date, Coast Guard regulations regarding MARPOL V became outdated and inconsistent with our international obligations and APPS.

The primary benefit of this rulemaking is to fulfill the U.S. treaty obligation as a signatory to MARPOL, and to align the CFR with MARPOL Annex V as implemented by APPS. This will improve the Coast Guard's ability to carry out its maritime stewardship mission to maintain and enhance environmental quality.

Alternatives

APPS implements MARPOL in U.S. law and under APPS, the amendments to Annex V will take effect in January 2013, regardless of any regulatory action. The only alternative to the action taken in this Interim Rule would be to keep the current version of 33 CFR part 151 in place after January 2013. This would establish a conflict between the requirements in APPS and MARPOL Annex V, as compared to the language in the CFR. Therefore, the alternative of maintaining the status quo is not ideal, as it could create confusion among the regulated population, who are required to follow the requirements in APPS and MARPOL Annex V whether or not the CFR language is corrected. As noted above, E.O. 13563 places value in harmonizing requirements, therefore this alternative was rejected.

As presented in *section ''III. Regulatory History,''* the Coast Guard's preferred alternative is to publish this IR without prior notice and opportunity to comment pursuant to authority under § 4(a) of the APA (5 U.S.C. 553(b)(B)).

B. 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. However, when an agency is not required to publish an NPRM for a rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in section III. ''Regulatory History'' and therefore is not required to publish a regulatory flexibility analysis. However, the Coast Guard did consider the economic impact of this rule on small entities. We estimate that the maximum costs to any vessel will be $12 for four placards whether the vessel owner is considered a small entity or not. Comments submitted will be evaluated under the criteria in the ''Regulatory Information'' section of this preamble.

C. 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 interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the interim rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR Rodney Wert at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. 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.

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).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). The placard discloses information supplied by the Federal government to the recipient for the purpose of disclosure to the public. Therefore, the cost of the replacement placards is exempted from the PRA and is not considered a collection of information (5 CFR 1320.3(a)(c)(2)).

E. 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. States do not have the authority to regulate the management and discharge of garbage under MARPOL Annex V.

Therefore, we have determined that the final rule does not have implications for federalism.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this interim rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This interim rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this interim rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This action falls under section 2.B.2, figure 2–1, paragraph (34)(d)of the Instruction and under section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002). Section 6(b) refers to actions that are mandated by Congressional action, and this action falls into that category. We seek any comments or information that may lead to the discovery of a significant environmental impact from this interim rule.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

Title 33—Navigation and Navigable Waters

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); E.O. 12777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 170.1.

■ 2. Amend § 151.05 as follows:

■ a. Remove the words ''MARPOL 73/78'', wherever they appear, and add in their place, the word ''MARPOL'';

■ b. Remove the definitions of the terms ''*Cargo associated wastes*'', ''*Maintenance waste*'', ''*MARPOL 73/78*'', ''*Oily rags*'' and ''*Victual waste*'';

■ c. Add, in alphabetical order, the definitions of the terms ''*Captain of the Port (COTP)*'', ''*Cargo residues*'', ''*Cooking oil*'', ''*En route*'', ''*Fishing gear*'', ''*Fixed or floating drilling rig or other platform*'', ''*Food wastes*'', ''*Harmful to the marine environment*'', ''*Incinerator ashes*'', ''*International Maritime Organization (IMO) guidelines*'', ''*MARPOL*'', ''*Navigable waters*'', and ''*Recycling*'' to read as follows; and

■ d. Revise the definitions of the terms ''*Domestic wastes*'', ''*Garbage*'', ''*Graywater*'', ''*Nearest land*'', ''*Operational wastes*'', and ''*Plastic*'' to read as follows:

§ 151.05 Definitions.

* * * * *

Captain of the Port (COTP) means the Coast Guard officer designated by the Commandant to command a COTP Zone as described in part 3 of this chapter.

Cargo residues means the remnants of any cargo which are not covered by other MARPOL Annexes and which remain on the deck or in holds following loading or unloading, including loading and unloading excess or spillage, whether in wet or dry condition or entrained in wash water, but does not include cargo dust remaining on the deck after sweeping or dust on the external surfaces of the ship.

* * * * *

Cooking oil means any type of edible oil or animal fat used or intended to be used for the preparation or cooking of

food, but does not include the food itself that is prepared using these oils.

* * * * *

Domestic wastes means all types of wastes not covered by other MARPOL annexes that are generated in the accommodation spaces on board the ship. Domestic wastes do not include graywater.

En route means that the ship is underway at sea on a course or courses, including deviation from the shortest direct route, which as far as practicable for navigational purposes, will cause any discharge to be spread over as great an area of the sea as is reasonable and practicable.

* * * * *

Fishing gear means any physical device or part thereof or combination of items that may be placed on or in the water or on the sea-bed with the intended purpose of capturing, or controlling for subsequent capture or harvesting, marine or fresh water organisms.

Fixed or floating drilling rig or other platform means a fixed or floating structure located at sea which is engaged in the exploration, exploitation, or associated offshore processing of sea-bed mineral resources.

Food wastes means any spoiled or unspoiled food substances and includes fruits, vegetables, dairy products, poultry, meat products and food scraps generated aboard ship.

* * * * *

Garbage means all kinds of food wastes, domestic wastes and operational wastes, all plastics, cargo residues, cooking oil, fishing gear, and animal carcasses generated during the normal operation of the ship and liable to be disposed of continuously or periodically except those substances which are defined or listed in other Annexes to the present Convention. Garbage does not include fresh fish and parts thereof generated as a result of fishing activities undertaken during the voyage, or as a result of aquaculture activities which involve the transport of fish including shellfish for placement in the aquaculture facility and the transport of harvested fish including shellfish from such facilities to shore for processing.

* * * * *

Graywater means drainage from dishwater, shower, laundry, bath, and washbasin drains. It does not include drainage from toilets, urinals, hospitals, animal spaces, and cargo spaces.

* * * * *

Harmful to the marine environment in relation to the discharge of:

(1) Cargo residues means residues of solid bulk substances which are classified according to the criteria of the United Nations Globally Harmonized System for Classification and Labeling of Chemicals (UN GHS) meeting the following parameters:

(i) Acute Aquatic Toxicity Category 1; and/or

(ii) Chronic Aquatic Toxicity Category 1 or 2; and/or

(iii) Carcinogenicity Category 1A or 1B combined with not being rapidly degradable and having high bioaccumulation; and/or

(iv) Mutagenicity Category 1A or 1B combined with not being rapidly degradable and having high bioaccumulation; and/or

(v) Reproductive Toxicity Category 1A or 1B combined with not being rapidly degradable and having high bioaccumulation; and/or

(vi) Specific Target Organ Toxicity Repeated Exposure Category 1 combined with not being rapidly degradable and having high bioaccumulation; and/or

(vii) Solid bulk cargoes containing or consisting of synthetic polymers, rubber, plastics, or plastic feedstock pellets (this includes materials that are shredded, milled, chopped, or macerated or similar materials).

(2) Cleaning agents or additives means a cleaning agent or additive that is:

(i) A ''harmful substance'' in accordance with the criteria in MARPOL Annex III; and/or

(ii) Contains any components which are known to be carcinogenic, mutagenic, or reprotoxic.

Notes to definition of *Harmful to the marine environment:*

1. These criteria are based on UN GHS, fourth revised edition (2011). For specific products (e.g., metals and inorganic metal compounds), guidance available in UN GHS, annexes 9 and 10 is essential for proper interpretation of the criteria and classification and should be followed.

2. These are products with a hazard statement classification for Carcinogenicity, Mutagenicity, Reproductive Toxicity, or Specific Target Organ Toxicity Repeated Exposure for oral hazards, dermal hazards, or without specification of the exposure route.

* * * * *

Incinerator ashes means ash and clinkers resulting from shipboard incinerators used for the incineration of garbage.

* * * * *

International Maritime Organization (IMO) guidelines means the guidelines for the Implementation of MARPOL Annex V (IMO Resolution MEPC.219(63), adopted March 2, 2012) and other garbage pollution related guidance approved or adopted by the IMO.

* * * * *

MARPOL means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocols of 1978 and 1997 relating to that Convention. A copy of MARPOL is available from the International Maritime Organization, 4 Albert Embankment, London, SE1, 7SR, United Kingdom.

* * * * *

Navigable waters means the territorial sea of the United States (as defined in Presidential Proclamation 5928 of December 27, 1988) and the internal waters of the United States.

Nearest land. The term ''from the nearest land'' means from the baseline from which the territorial sea of the territory in question is established in accordance with international law, except that, for the purposes of these regulations, ''from the nearest land'' off the northeastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in—latitude 11°00′ South, longitude 142°08′ East to a point in—latitude 10°35′ South, longitude 141°55′ East, thence to a point—latitude 10°00′ South, longitude 142°00′ East, thence to a point—latitude 9°10′ South, longitude 143°52′ East, thence to a point—latitude 9°00′ South, longitude 144°30′ East, thence to a point—latitude 10°41′ South, longitude 145°00′ East, thence to a point—latitude 13°00′ South, longitude 145°00′ East, thence to a point—latitude 15°00′ South, longitude 146°00′ East, thence to a point—latitude 17°30′ South, longitude 147°00′ East, thence to a point—latitude 21°00′ South, longitude 152°55′ East, thence to a point on the coast of Australia in latitude 24°42′ South, longitude 153°15′ East.

* * * * *

Operational wastes means all solid wastes (including slurries) not covered by other MARPOL Annexes that are collected on board during normal maintenance or operations of a ship, or used for cargo stowage and handling. Operational wastes also include cleaning agents and additives contained in cargo hold and external wash water. Operational wastes does not include discharges essential to the operation of a ship, including but not limited to graywater, bilge water, ballast water, controllable pitch propeller and thruster hydraulic fluid and other oil to sea interfaces (e.g., thruster bearings, stabilizers, rudder bearings, etc.), deck washdown and runoff and above water

line hull cleaning (not harmful to the marine environment), firemain systems water, gas turbine wash water, and/or non-oily machinery wastewater.

* * * * *

Plastic means a solid material, which contains as an essential ingredient one or more high molecular mass polymers, and which is formed (shaped) during either the manufacture of the polymer or the fabrication into a finished product by heat and/or pressure. Plastics have material properties ranging from hard and brittle to soft and elastic. For the purposes of these regulations, ''all plastics'' means all garbage that consists of or includes plastic in any form, including synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products.

* * * * *

Recycling means the activity of segregating and recovering components and materials for reprocessing.

* * * * *

■ 3. Revise § 151.51 to read as follows:

§ 151.51 Applicability.

(a) Except as provided in paragraphs (b) through (f) of this section, §§ 151.51 through 151.77 apply to each ship that—

(1) Is of United States registry or nationality, or one operated under the authority of the United States, including recreational vessels defined in 46 U.S.C. 2101(25) and uninspected vessels defined in 46 U.S.C. 2101(43), wherever located; or

(2) Is operated under the authority of a country other than the United States while in the navigable waters or the Exclusive Economic Zone of the United States.

(b) Sections 151.51 through 151.77 do not apply to—

(1) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service; or

(2) Any other ship specifically excluded by MARPOL.

(c) Section 151.55 (Recordkeeping) applies to—

(1) A manned oceangoing ship (other than a fixed or floating drilling rig or other platform) of 400 gross tons and above that is documented under the laws of the United States or numbered by a State;

(2) A manned oceangoing ship (other than a fixed or floating drilling rig or other platform) of 400 gross tons and above that is operated under the authority of a country other than the United States while in the navigable waters or the Exclusive Economic Zone of the United States;

(3) A manned fixed or floating drilling rig or other platform subject to the jurisdiction of the United States; or

(4) A manned ship that is certified to carry 15 or more persons engaged in international voyages.

(d) Section 151.57 (Garbage Management Plans) applies to—

(1) A manned oceangoing ship (other than a fixed or floating drilling rig or other platform) of 40 feet or more in length that is documented under the laws of the United States or numbered by a state and that either is engaged in commerce or is equipped with a galley and berthing;

(2) A manned fixed or floating drilling rig or other platform subject to the jurisdiction of the United States; or

(3) A manned ship of 100 gross tons or more that is operated under the authority of a country other than the United States while in the navigable waters or the Exclusive Economic Zone of the United States.

(e) Section 151.59 (Placards) applies to—

(1) A manned U.S. ship (other than a fixed or floating drilling rig or other platform) that is 26 feet or more in length;

(2) A manned floating drilling rig or other platform in transit that is subject to the jurisdiction of the United States; or

(3) A manned ship of 40 feet or more in length that is operated under the authority of a country other than the United States while in the navigable waters or the Exclusive Economic Zone of the United States.

(f) Section 151.73 (Discharge of Garbage from Fixed or Floating platforms) only applies to a fixed or floating drilling rig or other platform subject to the jurisdiction of the United States.

Note to § 151.51: The Exclusive Economic Zone extends from the baseline of the territorial sea seaward 200 miles as defined in the Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1983 Comp., p. 22).

§ 151.53 [Amended]

■ 4. Amend § 151.53 as follows:

■ a. Remove the text ''MARPOL 73/78'', wherever it appears, and add, in its place, the text ''MARPOL''; and

■ b. In paragraph (b), remove the text ''(4)(b)'', and add, in its place, the number ''3.2''; and following the words ''of Regulation'', remove the number ''5'', and add, in its place, the number ''8''.

■ 5. Revise § 151.55 to read as follows:

§ 151.55 Recordkeeping requirements.

(a) The master or person in charge of a ship to which this section applies shall ensure that a written record is maintained on the ship of each of the following garbage discharge or disposal operations:

(1) Discharge to a reception facility or to another ship;

(2) Incineration on the ship;

(3) Discharge into the sea; and/or

(4) Accidental or other exceptional discharges.

(b) When garbage is discharged to a reception facility or to another ship, the record under paragraph (a) of this section must contain the following information:

(1) The date and time of the discharge;

(2) If the operation was conducted at a port, the name of the port;

(3) If the operation was not conducted at a port, the latitude and longitude of the location where the operation was conducted, and if the operation involved off-loading to another ship, the name and official number of the receiving ship;

(4) The categories of garbage involved; and

(5) The estimated amount of each category of garbage discharged, described by volume in cubic meters.

(c) When garbage is incinerated on the ship, the record under paragraph (a) of this section must contain the following information:

(1) The date and time of the starting and stopping of the incineration;

(2) The latitude and longitude of the ship at the starting and stopping of the incineration;

(3) The categories of the garbage involved; and

(4) The estimated amount of each category of garbage involved, described by volume in cubic meters.

(d) When garbage which is allowed into the sea is discharged overboard, the record under paragraph (a) of this section must contain the following information:

(1) The date and time of the discharge;

(2) The latitude and longitude of the ship;

(3) The categories of the garbage involved; and

(4) The estimated amount of each category of garbage involved, described by volume in cubic meters.

(e) For the record under paragraph (a) of this section, the categories of garbage are

(1) Plastics,

(2) Food wastes,

(3) Domestic wastes,

(4) Cooking oil,

(5) Incinerator ashes,

(6) Operational wastes,

(7) Cargo residues,

(8) Animal carcasses, and

(9) Fishing gear.

(f) The record under paragraph (a) of this section must be prepared at the time of the operation, certified as correct by the master or person in charge of the ship, maintained on the ship for 2 years following the operation, and made available for inspection by the Coast Guard.

■ 6. Revise § 151.57 to read as follows:

§ 151.57 Garbage management plans.

(a) The master or person in charge of a ship to which this section applies shall ensure that the ship is not operated unless a garbage management plan meeting paragraph (b) of this section is on the ship and that each person handling garbage follows the plan.

(b) Each garbage management plan under paragraph (a) of this section must be in writing and—

(1) Provide for the discharge of garbage by means that meet Annex V of MARPOL, the Act, and §§ 151.51 through 151.77;

(2) Describe procedures for minimizing, collecting, processing, storing, and discharging garbage; and

(3) Designate the person who is in charge of carrying out the plan.

(Approved by the Office of Management and Budget under control number 1625–0072)

■ 7. Revise § 151.59 to read as follows:

§ 151.59 Placards.

(a) The master or person in charge of a ship, including a drilling rig or platform, to which this section applies shall ensure that one or more placards meeting the requirements of this section are displayed in prominent locations and in sufficient numbers so that they can be read by the crew and passengers. These locations must be readily accessible to the intended reader and may include embarkation points, food service facilities, garbage handling spaces, living spaces, and common areas on deck. If the Captain of the Port (COTP) determines that the number or location of the placards is insufficient to adequately inform crew and passengers, the COTP may require additional placards and may specify their locations.

(b) Each placard must be at least 20 cm (8 in) wide by 12½ cm (5 in) high, made of a durable material, and legible.

(c) At a minimum, each placard must notify the reader of the operating requirements contained in §§ 151.67 through 151.73 as they apply to that ship. The following requirements should also be prominently stated:

(1) The discharge of all garbage is prohibited into the navigable waters of the United States and into all other waters except as specifically allowed;

(2) The discharge of all forms of plastic into all waters is prohibited;

(3) A person who violates the above requirements is liable for civil and/or criminal penalties; and

(4) Regional, state, and local restrictions on garbage discharges also may apply.

(d) For ships while operating on the Great Lakes or their connecting or tributary waters, the placard must—

(1) Notify the reader of the information in paragraph (c) of this section; or

(2) Notify the reader of the following:

(i) Except as allowed by § 151.66, the discharge of all garbage into the Great Lakes or their connecting or tributary waters is prohibited; and

(ii) A person who violates the above requirements is liable for a civil penalty for each violation, and the criminal penalties of a class D felony.

§ 151.61 [Amended]

■ 8. Amend § 151.61 as follows:

■ a. In paragraph (b), after the words ''Annex V of MARPOL'', remove the text ''73/78''; and

■ b. In paragraph (d,) after the word ''A'', remove the word ''waste'' and add, in its place, the word ''garbage''.

§ 151.63 [Amended]

■ 9. In § 151.63(b)(4), after the word ''shipboard'', remove the word ''waste'', and add, in its place, the word ''garbage''.

§ 151.65 [Amended]

■ 10. Amend § 151.65 as follows:

■ a. At the end of paragraph (a), remove the text ''.'', and add, in its place, the text '';''; and

■ b. In paragraph (b), remove the text ''.'', and add, in its place, the text ''; or''.

■ 11. Amend § 151.66 as follows:

■ a. Revise the heading of § 151.66;

■ b. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d) respectively;

■ c. Add new paragraph (b); and

■ d. In newly designated paragraph (c), revise the definition of the term ''Bulk dry cargo residues'' as follows:

§ 151.66 Operating requirements: Discharge of garbage in the Great Lakes and other navigable waters of the United States.

* * * * *

(b) Cleaning agents or additives contained in deck and external surfaces wash water may be discharged only if these substances are not harmful to the marine environment.

(c) * * *

* * * * *

Bulk dry cargo residues in relation to the Great Lakes means non-hazardous and non-toxic residues of dry cargo carried in bulk, including limestone and other clean stone, iron ore, coal, salt, and cement. It does not include residues of any substance known to be toxic or hazardous, such as, nickel, copper, zinc, lead, or materials classified as hazardous in provisions of law or treaty;

* * * * *

■ 12. Revise § 151.69 to read as follows:

§ 151.69 Operating requirements: Discharge of garbage outside special areas.

(a) Except for ships operating in the Great Lakes which must comply with section 151.66, when a ship is operating outside of a special area specified in § 151.53, no person may discharge garbage into the sea, except as allowed in paragraphs (b) through (d) of this section.

(b) The following allowed discharges of garbage shall only be conducted while the ship is en route and as far as practicable from the nearest land, but never less than—

(1) 12 nautical miles for food wastes, except that, such food wastes may be discharged outside of 3 nautical miles from nearest land after they have been processed with a grinder or comminuter specified in § 151.75;

(2) 12 nautical miles for cargo residues that cannot be recovered using commonly available methods for unloading. The discharged cargo residues must not be harmful to the marine environment; and

(3) 100 nautical miles and the maximum water depth possible for animal carcasses. Discharge shall be conducted in accordance with the applicable International Maritime Organization guidelines.

(c) Cleaning agents or additives contained in cargo hold, deck, and external surfaces wash water may be discharged only if these substances are not harmful to the marine environment.

(d) Mixtures of garbage having different discharge requirements must be:

(1) Retained on board for later disposal ashore; or

(2) Discharged in accordance with the more stringent requirement prescribed by paragraphs (a) through (c) of this section.

■ 13. Revise § 151.71 to read as follows:

§ 151.71 Operating requirements: Discharge of garbage within special areas.

(a) When a ship is located within a special area referenced in § 151.53 of this part, no person may discharge garbage into the water, except as allowed in this section.

(b) Food wastes shall only be discharged while the ship is en route and—

(1) As far as practicable from the nearest land or nearest ice shelf, but not less than 12 nautical miles from the nearest land or nearest ice shelf;

(2) After having been processed with a grinder or comminuter specified in § 151.75; and

(3) Not contaminated by any other garbage type.

(4) The discharge of introduced avian products, including poultry and poultry parts, is not permitted in the Antarctic area unless it has been treated to be made sterile.

(c) Cargo residues that cannot be recovered using commonly available methods for unloading may be discharged where all the following conditions are satisfied:

(1) The cargo residues, cleaning agents or additives contained in the cargo hold washing water do not contain any substances that are harmful to the marine environment.

(2) Both the port of departure and the next port of destination must be within the special area and the ship will not transit outside of the special area when moving between those ports.

(3) No adequate reception facilities are available at those ports.

(4) When the conditions of paragraphs (c)(1) through (c)(3) of this section have been fulfilled, discharge of cargo hold washing water containing residues shall be made as far as practicable from the nearest land or the nearest ice shelf and not less than 12 nautical miles from the nearest land or the nearest ice shelf.

(d) Cleaning agents or additives contained in deck and external surfaces wash water may be discharged only if those substances are not harmful to the marine environment.

(e) Mixtures of garbage having different discharge requirements must be:

(1) Retained on board for later disposal ashore; or

(2) Discharged in accordance with the more stringent requirement prescribed by paragraphs (b) through (d) of this section.

■ 14. Revise § 151.73(b) to read as follows:

§ 151.73 Operating requirements: Discharge of garbage from fixed or floating platforms.

* * * * *

(b) Food waste may be discharged into the surrounding waters from a ship or fixed or floating platform regulated by paragraph (a) of this section if—

(1) It is processed with a grinder or comminuter meeting the standards in § 151.75; and

(2) That ship or fixed or floating drilling rig or platform is beyond 12 nautical miles from nearest land.

§ 151.75 [Amended]

■ 15. Amend § 151.75 by removing the text ''§ 151.69(a)(2)'' and adding, in its place, the text ''§ 151.69(b)(1), § 151.71(b)(2),''.

■ 16. Revise § 151.77 to read as follows:

§ 151.77 Exceptions for emergencies and health risks.

Sections 151.67, 151.69, 151.71, and 151.73 do not apply to the following:

(a) Discharges of garbage from a ship necessary for the purpose of securing the safety of a ship and those on board or saving life at sea.

(b) The accidental loss of garbage resulting from damage to a ship or its equipment, provided that all reasonable precautions have been taken before and after the occurrence of the damage, to prevent or minimize the accidental loss.

(c) The accidental loss of fishing gear from a ship, provided all reasonable precautions have been taken to prevent such loss.

(d) The discharge of fishing gear from a ship for the protection of the marine environment or for the safety of that ship or its crew.

(e) The en route requirements of §§ 151.69 and 151.71 do not apply to the discharge of food wastes when it is clear the retention on board of these food wastes present an imminent health risk to the people on board.

■ 17. Remove Appendix A to §§ 151.51 through 151.77—Summary of Garbage Discharge Restrictions.

Dated: *February 20, 2013.*

J.G. Lantz,

Director of Commercial Regulations and Standards, U. S. Coast Guard.

[FR Doc. 2013–04616 Filed 2–27–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0378; FRL–9783–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Allegheny County Regulations for Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Air Pollution Control portion of the Allegheny County Health Department (ACHD) Rules and Regulations, relating to ACHD's Prevention of Significant Deterioration (PSD) program. Additionally, EPA is also approving this revision for the purpose of determining that ACHD has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to ACHD's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 ozone National Ambient Air Quality Standard (NAAQS) as well as the 1997 and 2006 NAAQS for particulate matter less than 2.5 microns ($PM_{2.5}$). EPA is approving these revisions that incorporate by reference the Federal PSD program in its entirety in accordance with the requirements of the CAA.

DATES: This final rule is effective on April 1, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0378. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, (215) 814–2183, or by email at *wentworth.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 2012 (77 FR 34300), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The

NPR proposed approval of a SIP revision pertaining to the Air Pollution Control portion of the Allegheny County Health Department (ACHD) Rules and Regulations, relating to ACHD's PSD program. The formal SIP revision was submitted by Commonwealth of Pennsylvania on July 1, 2008.

II. Summary of SIP Revision

The SIP revision submitted by Pennsylvania on behalf of ACHD consists of regulations pertaining to ACHD's Prevention of Significant Deterioration (PSD) program. These regulations incorporate by reference the federal PSD program at 40 CFR section 52.21. Any changes in the Federal program occurring after the date the ACHD regulations were promulgated are automatically incorporated into ACHD's regulations and into its SIP. By approving this SIP revision, EPA is formally approving ACHD's PSD program, which had previously been operating under a delegation agreement.

Accordingly, the SIP revision incorporates the new PSD requirements for $PM_{2.5}$ pursuant to the EPA's ''Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (PSD $PM_{2.5}$ Rule), which was promulgated on October 20, 2010 (75 FR 64864), including the provision at 40 CFR section 52.21(k)(2) adding the $PM_{2.5}$ SILs and the provision at section 52.21(i)(5)(i)(c) adding the $PM_{2.5}$ SMC. On January 22, 2013, the U.S. Court of Appeals for the District of Columbia Circuit (''the Court'') in *Sierra Club* v. *EPA,* No. 10–1413 (filed Dec. 17. 2010), issued a judgment that, *inter alia,* vacated and remanded the provisions at section 52.21(k)(2) and vacated the provisions at section 52.21(i)(5)(i)(c) that were promulgated as part of the October 20, 2010 PSD $PM_{2.5}$ Rule. On this same date, the Court ordered that issuance of the mandate shall be withheld until seven days after any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. Proc. 40(a)(1); Fed. R. App. P. 41(b). Upon issuance of the mandate, the Court's decision will become final and the provisions of sections 52.21(k)(2) and (i)(5)(i)(c) will be vacated. At that time, ACHD's regulations and SIP will automatically update such that they no longer include that regulatory text, as the vacatur will render those provisions without legal effect. Although the Court's decision is not final until the mandate issues, EPA expects ACHD to act consistently with the Court's opinion in applying the Federal PSD regulations prior to formal issuance of the mandate. Thus, EPA is approving the SIP revision as submitted.

Other specific requirements of the regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the July 1, 2008 SIP revision as a revision to the Commonwealth of Pennsylvania SIP. EPA is also approving this revision for the purpose of determining that ACHD has met its obligations pursuant to the PSD portions of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 1997 ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, relating to ACHD's PSD program, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference,

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 8, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020:

■ a. The table in paragraph (c)(2) is amended by adding an entry for section ''2102.07'' in numerical order.

■ b. The table in paragraph (e)(1) is amended by adding three new entries ''Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS'', ''Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS'', and ''Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS'' at the end of the table.

The revised and added text reads as follows:

§ 52.2020 Identification of plan

* * * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
* *	*	*	* *	*
	Part B Permits Generally			
* *	*	*	* *	*
2102.07	Prevention of Significant Deterioration.	3/31/98	2/28/13 [Insert page number where the document begins].	Added.
* *	*	*	* *	*

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	*
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Allegheny County	7/1/08	2/28/13 [Insert page number where the document begins].	This action addresses the PSD related elements of the following CAA requirements: 110(a)(2)(C), (D)(i)(II), and (J)
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Allegheny County	7/1/08	2/28/13 [Insert page number where the document begins].	This action addresses the PSD related elements of the following CAA requirements: 110(a)(2)(C), (D)(i)(II), and (J)
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Allegheny County	7/1/08	2/28/13 [Insert page number where the document begins].	This action addresses the PSD related elements of the following CAA requirements: 110(a)(2)(C), (D)(i)(II), and (J)

[FR Doc. 2013–04291 Filed 2–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0521; FRL–9783–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This revision pertains to EPA's greenhouse gas (GHG) permitting provisions as promulgated on June 3, 2010. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on April 1, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0521. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 29, 2012 (77 FR 65518), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of revisions to Delaware's Prevention of Significant Deterioration (PSD) program pertaining to the regulation of GHGs. The formal SIP revision was submitted by Delaware on October 12, 2011 and supplemented on August 9, 2012.

II. Summary of SIP Revision

This revision pertains to EPA's PSD permitting provisions relating to GHGs as promulgated on June 3, 2010 in the Tailoring Rule (75 FR 31514). The SIP revision modifies Delaware's PSD program at 7 DE Admin. Code 1125 to establish appropriate emission thresholds for determining which new stationary sources and modifications become subject to Delaware's PSD permitting requirements for their GHG emissions. Other specific requirements of this SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Delaware's October 12, 2011 and August 9, 2012 submissions as a revision to the Delaware SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Delaware's GHG regulations may not be challenged later

in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 8, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entry for Regulation 1125, Section 1.0 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
1125 Requirements for Preconstruction Permitting				
Section 1.0	General Provisions	8/11/12	2/28/13 [*Insert page number where the document begins*].	Added definitions of "GHG" and "Subject to Regulation" under Section 1.9. Note: In section 1.9, the previous SIP-approved baseline dates for sulfur dioxide, particulate matter, and nitrogen dioxide in the definition of "Baseline Date" remain part of the SIP.
*	*	*	*	*

* * * * *

[FR Doc. 2013–04143 Filed 2–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0305; FRL–9783–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environmental (MDE) on April 4, 2012. This revision defers until July 21, 2014 the application of the Prevention of Significant Deterioration (PSD) permitting requirements to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources in the State of Maryland. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on April 1, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0305. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 7, 2012 (77 FR 55171), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a revision to the Maryland SIP which would defer until July 21, 2014 the application of PSD permitting requirements to biogenic CO_2 emissions from bioenergy and other biogenic stationary sources in Maryland. The formal SIP revision (#12–02) was submitted by MDE on April 4, 2012. During the public comment period, EPA received a request from a commenter to extend the comment period. In response to that request, EPA re-opened the public comment period for an additional 30 days under additional notice on November 16, 2012 (77 FR 68721).

II. Summary of SIP Revision

EPA incorporated the biomass deferral into the Code of Federal Regulations (CFR) governing state programs and into the Federal PSD program by amending the definition of "subject to regulation" under 40 CFR 51.166 and 52.21 respectively. Maryland implements its PSD program by incorporating section 52.21 by reference. This incorporation references a date specific version of the CFR and is updated periodically and submitted to EPA for approval into the SIP. In order to adopt the Biomass Deferral, Maryland has revised COMAR 26.11.06.14B(1) to incorporate the 2009 version of 40 CFR 52.21 "as amended by" the Tailoring Rule *and* the Biomass

Deferral. Additionally, the definitions of ''PSD source'' and ''greenhouse gas'' at COMAR 26.11.01.01 and 26.11.02.01 respectively have been revised to incorporate the Biomass Deferral.

Other specific requirements of Maryland's April 4, 2012 submittal and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR, either during the initial comment period, or the additional 30-day comment period.

III. Final Action

EPA is approving Maryland's April 4, 2012 SIP submittal as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the regulation of biogenic GHGs in Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 8, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the second entry for COMAR 26.11.01.01, and the entries for COMAR 26.11.02.01, and 26.11.06.14.

The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.01 General Administrative Provisions				
*	*	*	*	*
26.11.01.01	Definitions	3/5/12	2/28/13 *[Insert page number where the document begins].*	Revised .01B(6–1) and .01B(37).

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.02 Permits, Approvals, and Registration				
26.11.02.01	Definitions	3/5/12	2/28/13 *[Insert page number where the document begins].*	Revised .01B(44) and .01C(1).
*	*	*	*	*
26.11.06 General Emissions Standards, Prohibitions, and Standards				
*	*	*	*	*
26.11.06.14	Control of PSD Sources	3/5/12	2/28/13 *[Insert page number where the document begins].*	Revised .14B(1).
*	*	*	*	*

* * * * *

[FR Doc. 2013–04145 Filed 2–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0887; FRL– 9785–5]

Approval and Promulgation of Implementation Plans; Tennessee; Revisions to the Knox County Portion of the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP), submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) on August 19, 2009, August 22, 2012, and October 12, 2012. The SIP submittals include changes to Knox County Air Quality Management Regulations concerning open burning, permits and regulation of volatile organic compounds (VOCs). TDEC considers Knox County's SIP revisions to be as or more stringent than the Tennessee SIP requirements. EPA is approving the Knox County SIP revisions because the State has demonstrated that they are consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective April 29, 2013 without further notice, unless EPA receives adverse comment by April 1, 2013. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0887, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0887,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0887. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Analysis of Knox County's Submittals
II. Final Action
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I. Analysis of Knox County's Submittals

On August 19, 2009, August 12, 2012 and October 12, 2012, TDEC submitted SIP revisions to EPA for approval into the Knox County portion of the Tennessee SIP. Specifically, the August 19, 2009, SIP revision includes changes to regulations, section 16.0—*Open Burning* (subsection 16.3.C), Section 25.0—*Permits* (subsection 25.10.B.11) and Section 46.0—*Regulation of Volatile Organic Compounds.* The August 22, 2012, and October 12, 2012, SIP revisions both amend Section 25.0 (subsection 25.1). The Knox County SIP revisions, summarized below, are as or more stringent than the Tennessee SIP and are approvable pursuant to section 110 of the CAA. EPA is taking action to approve these SIP revisions.

A. August 19, 2009, Submittal

This SIP revision makes the following changes to Knox County Regulations:

Section 16 *Open Burning,* Section 25 *Permits* and Section 46 *Regulation of Volatile Organic Compounds.* Specifically, the submission requests that:

(1) Section 16.3.—Exceptions to Prohibition—Without Permit—remove from the SIP paragraph 16.3.C allowing law enforcement agencies to open burn contraband. EPA is not taking action on this request to remove Section 16.3.C from the SIP because it was never approved into the Knox County portion of the Tennessee SIP, therefore no action is required;

(2) Section 25.10—Permit by Rule adds Section 25.10.B.11 ''Ethanol distribution operations'' so that ethanol distribution operations are deemed to have a ''Permit by Rule'' if certain conditions are met. The intent of the ''Permit by Rule''' provision is to provide a simple compliance technique to limit a facility's potential emissions below the ''major source'' threshold, with respect to title V of the CAA. The ethanol distribution operations ''Permit by Rule'' provision operates by limiting annual throughput and utilizing the Stage I vapor recovery system to ensure that a source will not exceed the major source thresholds; and

(3) Section 46.2—Regulation of Volatile Organic Compounds—replaces at paragraph 46. the existing definition of VOCs with the federal definition of VOCs, by incorporating by reference 40 CFR part 51 subpart F definition of VOCs. This will ensure that the local and federal definitions of VOCs are consistent.

B. August 22, 2012, Submittal

This revision changes Knox County Regulation, section 25.0 by adding a new subsection 25.1.D that states ''Additional and/or more restrictive construction permit conditions may be established using the same procedures and criteria specified in Section 25.3.I.'' This provision allows for a more restrictive construction permit to be issued provided it adheres to the procedures in Knox County Regulation, section 25.3.I.

C. October 12, 2012, Submittal

This SIP revision changes Knox County Regulation, section 25.0 by adding a new subsection 25.1.E to specify that public notice and a 30-day comment period will be provided for Knox County construction permits for minor sources.

II. Final Action

EPA is approving the aforementioned changes to Knox County portion of the Tennessee SIP, because they are consistent with EPA policy and the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 29, 2013 without further notice unless the Agency receives adverse comments by April 1, 2013.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 29, 2013 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file any comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 12, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220(c) is amended by revising entries in Table 3 for ''Sections 25.0 and 46.0'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 3—EPA APPROVED KNOX COUNTY, REGULATIONS

State section	Title/Subject	State effective date	EPA Approval date	Explanation
* *	*	*	* *	*
Section 25.0	Permits	10/10/2012	2/28/13 [Insert first page of publication].	
* *	*	*	* *	*
Section 46.0	Regulation of Volatile Organic Compounds.	8/12/2009	2/28/13 [Insert first page of publication].	
* *	*	*	* *	*

* * * * *

[FR Doc. 2013–04412 Filed 2–27–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 158 and 161

[EPA–HQ–OPP–2010–0427; FRL–9372–7]

RIN 2070–AJ26

Declaration of Prion as a Pest Under FIFRA; Related Amendments; and Availability of Final Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this final rule EPA declares a prion (*i.e.,* proteinaceous infectious particle) to be a ''pest'' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and amends the regulations to expressly include prion within the regulatory definition of pest. This final rule also amends existing pesticide product performance data requirements to clarify that efficacy data are required for pesticide products with prion-related claims. In addition, EPA is announcing the availability of final test guidelines on generating the product performance data for prion-related pesticide products.

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

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0427, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in the EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.* In addition to being available in the docket, a copy of the final test guidelines titled ''Product Performance Test Guidelines, OCSPP 810.2700: Products with Prion-Related Claims'' is available online at *http://epa.gov/ocspp/pubs/frs/home/testmeth.htm.*

FOR FURTHER INFORMATION CONTACT: Melba Morrow, Antimicrobials Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–2716; fax number: (703) 308–6467; email address: *morrow.melba@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you apply for or own pesticide registrations. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document might apply to them. Potentially affected entities may include, but are not limited to:

- Producers of pesticide products (NAICS code 32532).
- Producers of antimicrobial pesticides (NAICS code 32561).
- Veterinary testing laboratories (NAICS code 541940).
- Medical pathology laboratories (NAICS code 621511).
- Taxidermists, independent (NAICS code 711510).
- Surgeons (NAICS code 621111).
- Dental surgeons (NAICS code 621210).

B. What is the agency's authority for taking this action?

This action is issued under the authority of sections 2 through 34 of FIFRA (7 U.S.C. 136–136y). In particular, the final rule is issued pursuant to FIFRA section 25(a) (7 U.S.C. 136w(a)).

C. What action is the agency taking?

EPA declares a prion (*i.e.,* proteinaceous infectious particle) to be a ''pest'' under FIFRA, and amends its regulations to expressly include prion within the regulatory definition of pest. Since 2003, EPA has considered a prion to be a pest under FIFRA, so a product intended to reduce the infectivity of any prion on inanimate surfaces (*i.e.,* a ''prion-related product'') is considered to be a pesticide and regulated as such. Any company seeking to distribute or sell a pesticide product regulated under FIFRA must, subject to some possible exceptions, obtain a section 3 registration, section 24(c) registration, or a section 18 emergency exemption before it can be distributed or sold in the United States. This rule codifies the Agency's current interpretation of FIFRA with respect to prions. The amendment of the definition of ''pest'' in EPA's regulations, together with the formal declaration under FIFRA section 25(c)(1) that a prion is a pest, eliminates any confusion about the status of prion-related products under FIFRA. Regulating prion-related products under FIFRA is appropriate for protecting human health and the environment against unreasonable adverse effects and ensuring that such products are effective.

EPA is also amending its product performance data requirements to clarify that efficacy data are required for all products with prion-related claims. The existing product performance data requirements already require efficacy data to be submitted when the ''pesticide product bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including, but not limited to, microorganisms infectious to man in any area of the inanimate environment * * * .'' Since this general product performance data requirement applies to products with prion-related claims, EPA is amending the regulation to specifically identify the efficacy data that are required for products with prion-related claims. In addition, EPA is announcing the availability of final test guidelines concerning the generation of product performance data for prion-related products.

D. What are the incremental costs and benefits of this action?

This final rule will: (a) Codify the Agency's current interpretation of FIFRA by adding ''prion'' to the list of pests in 40 CFR 152.5, and (b) amend the pesticide data requirement regulations to clarify that efficacy data are required to support the registration of all end-use products which bear label claims to reduce the infectivity of prions. The qualitative benefits of this final rule relate to the protection of human health and the environment by subjecting prion-related products to regulation under FIFRA, including all data and labeling requirements. The incremental costs of this rule are estimated to range from $424,000 to $4.72 million per pesticide registration action. See also Unit VI.A.

II. Background

A. What is a prion?

Prions (proteinaceous infectious particles) may occur in the central nervous system tissues of animals as an abnormal (misfolded), infectious form of prion protein.

Prion protein in its normal form, or conformation, can be designated PrP^{c} (cellular isoform) while abnormal conformations of prion proteins are generally called prions. Different types of prions are commonly designated by the type of diseases they produce, such as PrP^{Sc} (prions associated with scrapie) and PrP^{BSE} (prions associated with bovine spongiform encephalopathy—mad cow disease).

In the disease process, prions (such as PrP^{sc}) recruit normal prion proteins (PrP^{c}) and convert them into prions (*e.g.,* another copy of PrP^{Sc}). This recruitment and conversion process results in the progressive accumulation of disease-producing prions. When this process takes place in the brain, it causes disease that slowly progresses from neuronal dysfunction and degeneration to death. These neurodegenerative prion diseases are known collectively as transmissible spongiform encephalopathies (TSE). TSEs include scrapie disease in sheep, bovine spongiform encephalopathy (BSE) in cattle, chronic wasting disease (CWD) in deer and elk, kuru and variant Creutzfeld-Jakob Disease (vCJD) in humans, and similar diseases in other animals. EPA and other agencies are concerned that animal-related prions may spread to other animals (*e.g.,* scrapie among sheep, CWD among cervids) or to humans (*e.g.,* BSE), and that human-related prions may be passed to other humans (*e.g.,* kuru or vCJD). These diseases are always fatal in humans and animals alike, and there are no known treatments or cures.

B. Regulatory History of Products With Prion-Related Claims

On September 10, 2003, EPA determined that a prion should be considered to be a ''pest'' under the FIFRA (7 U.S.C. 136 *et seq.*) and that products intended to inactivate prions (*i.e.,* ''prion-related products'') should be regulated under FIFRA (Ref. 1).

In the **Federal Register** issue of January 26, 2011 (76 FR 4602) (FRL–8850–4), to eliminate any confusion about the status of prion-related products under FIFRA, EPA issued a proposed rule that, when finalized, would declare a prion a ''pest'' under FIFRA pursuant to the authority of FIFRA section 25(c)(1), and amend EPA's regulations to expressly include prion within the regulatory definition of pest. EPA currently considers a prion to be a pest under FIFRA; in addition, a product intended to reduce the infectivity of any prion on inanimate surfaces (*i.e.,* a ''prion-related product'') is considered to be a pesticide and regulated as such. Subject to some exceptions, any pesticide product must be registered or exempted under FIFRA sections 3, 24(c), or 18 before the product may be distributed or sold in the United States.

In the **Federal Register** issue of November 17, 2011 (76 FR 71294) (FRL–8886–1), as a supplement to the proposed rule to declare a prion (*i.e.,* proteinaceous infectious particle) a ''pest'' under FIFRA, and to amend its regulations to expressly include prion with the regulatory definition of pest (January 26, 2011; 76 FR 4602), EPA proposed to amend its product performance data requirements in 40 CFR parts 158 and 161 to clarify that efficacy data are required for all products with prion-related claims. The existing product performance data requirements already require efficacy data to be submitted when the ''pesticide product bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including, but not limited to, microorganisms infectious to man in any area of the inanimate environment * * * .'' Since this general product performance data requirement applies to products with prion-related claims, EPA proposed to amend the regulation to specifically identify the efficacy data required for products with prion-related claims. In addition, EPA announced the availability for public review and comment of draft test guidelines concerning the generation of product performance data for prion-related products.

C. Data Requirements for Pesticides

First promulgated in 1984, EPA's pesticide data requirements outline the kinds of data and related information typically needed to register a pesticide. Since there is much variety in pesticide chemistry, exposure and hazard, the requirements are designed to be flexible. Test notes to the data requirements tables and other information in the regulation explain the conditions under which data are typically needed. Essentially, the data requirements identify the questions that the applicant will need to answer regarding a pesticide product before the Agency can consider it for registration.

At this time, the data requirements for conventional, biochemical, and microbial pesticides are codified in 40 CFR part 158, and data requirements for antimicrobial pesticides are codified in 40 CFR part 161. In addition, part 158 contains general provisions concerning data for the pesticides covered by the regulation (subpart A), instructions on how to use the data tables in the regulation (subpart B), and a series of data tables that identify data requirements tailored to specific kinds of pesticides, *i.e.,* conventional pesticides (subparts D–O), biochemical pesticides (subpart U), microbial pesticides (subpart V), and several reserved subparts as placeholders for future tailoring of the data requirements that is underway to facilitate the utility of the data tables for pesticide registrants, such as reserved subpart W for antimicrobials.

On October 26, 2007, EPA revised the structure of part 158 and the data requirements for conventional pesticides (72 FR 60934), and biochemical pesticides and microbial pesticides (72 FR 60988). In conjunction with those revisions, EPA also transferred intact the original 1984 pesticide data requirements that had been in part 158 into a new part 161, titled ''Data Requirements for Antimicrobial Pesticides'' (72 FR 60251, October 24, 2007). In essence, part 161 is intended to be transitional by preserving the existing data requirements applicable to antimicrobial pesticides until a new final regulation that tailors the data requirements for antimicrobial pesticides is promulgated. On October 8, 2008 (73 FR 59382), EPA proposed to establish data requirements specific to antimicrobial pesticide chemicals in 40 CFR part 158, subpart W and to remove 40 CFR part 161. To date, these proposed changes have not been promulgated.

D. Test Guidelines Used To Develop Data for Submission to EPA

EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has issued a series of harmonized test guidelines for use in the testing of pesticides and toxic substances, and the development of test data for submission to the Agency. The OCSPP test guidelines are documents that specify methods that EPA recommends be used to generate data that are submitted to EPA to support the registration of a pesticide under FIFRA (7 U.S.C. 136 *et seq.*), setting of a tolerance or tolerance exemption for pesticide residues under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), or regulatory activities for other chemical substances under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*). The OCSPP harmonized test guidelines serve as a compendium of EPA-accepted scientific methodologies and protocols for conducting the studies routinely used for generating data on pesticides and industrial chemicals regulated under FIFRA, FFDCA, and TSCA, and may also be useful for voluntary testing purposes. The OCSPP harmonized test guidelines can be accessed online at *http://epa.gov/ocspp/pubs/frs/home/testmeth.htm.*

III. Public Comments on the Proposed Rules

All of the comments submitted to EPA on both of the proposed rules are included in the docket for this rulemaking under docket ID number EPA–HQ–OPP–2010–0427. EPA prepared two Response to Comment documents that summarize the comments received and provide EPA's detailed responses to all comments received. This unit discusses, in general terms, the public comments and EPA's responses to those comments.

A. Public Comments on the January 2011 Proposal

In response to the January 2011 proposed rule, six parties submitted comments—one in favor, four against, and one neutral. The commenter in favor of the proposed rule expressed concern about the threat posed to human health from prions and the need to use an existing regulatory scheme to assure protection of public health. The commenters disagreed with the proposed rule and cited a range of reasons: Poor statutory analysis, use of regulatory authority to modify the intent of Congress and to bypass the lawmaking processes, declaring prions to be pests even though they are not

alive, and declaring a prion to be a pest could lead to further declarations that other non-living materials are pests. EPA's responses to these comments may be found in the document titled ''EPA, Office of Pesticide Programs (OPP), Responses to Comments Received Concerning 'Declaration of Prion as a Pest Under FIFRA and Amendment of EPA's Regulatory Definition of Pests to Include Prion.' '' (Ref. 2). Overall, EPA was not persuaded by the negative comments to not issue the final rule as proposed.

B. Public Comments on the November 2011 Supplemental Proposed Rule

In response to the November 2011 supplemental proposed rule (76 FR 71294), two parties submitted comments—one in favor and one against the proposed supplemental rule. The first commenter advocated that EPA regulate all possible prion carriers that have any likelihood of being transmitted to human beings, since the commenter stated that she lost her mother to sporadic Creutzfeldt Jakob Disease. The second commenter expressed opposition to the proposed supplemental rule, submitting the exact same comments that he had submitted previously for the proposed rule. EPA's responses to these comments may be found in the document titled ''EPA, Office of Pesticide Programs (OPP), Responses to Comments Received Concerning 'Prions: Proposed Amendment to Clarify Product Performance Data for Products With Prion-Related Claims and Availability of Draft Test Guidelines' '' (Ref. 3). Overall, EPA was not persuaded by the negative comment to not issue the changes to EPA's existing regulations as proposed.

IV. The Final Rule

EPA is finalizing the proposed changes as proposed. Specifically, EPA has determined that under FIFRA a prion is considered to be a pest; thus, pursuant to the authority of FIFRA section 25(c)(1), EPA is declaring a prion to be a pest. For the same reasons, EPA is amending the regulatory definition of ''pests'' in 40 CFR 152.5 to expressly include ''prion.'' These actions make explicit the Agency's authority to regulate products distributed or sold for the purpose of reducing the infectivity of prions (*i.e.,* prion-related products), other than prions on or in living humans or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA section 201(g)(1)) and cosmetics (as defined in FFDCA section 201(i)). Prion-related products are already regulated under FIFRA and subject to all requirements and provisions of the Act based on EPA's September 10, 2003 decision (Ref. 1) that prions share enough characteristics of an ''other micro-organism'' or ''form of life'' (as those terms are used in FIFRA) to fall within the scope of FIFRA section 2(t) and 40 CFR 152.5(d). This rule ensures that the regulatory definition reflects the Agency's authority to regulate prion-related products. The primary impact of declaring that a prion is a pest and including ''prion'' in the regulatory definition of ''pest'' is to provide regulatory clarity that prion-related products must be registered under FIFRA sections 3 or 24(c), or otherwise exempted before such products may be distributed or sold in the United States.

EPA is also amending its pesticide data requirement regulations to clarify that efficacy data are required to support the registration of all end-use products that are intended to be used on inanimate items and/or environmental surfaces, and which bear label claims to reduce the infectivity of prions. Specifically, EPA is amending the data requirements for product performance testing that are currently found in 40 CFR 158.400 and 40 CFR 161.640 by inserting an entry in the data tables to more clearly specify that efficacy data are required for prion-related products.

Currently, EPA's regulations at 40 CFR 158.400(e)(1) and 40 CFR 161.640(b)(1) require efficacy data to be submitted when the ''pesticide product bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including, but not limited to, microorganisms infectious to man in any area of the inanimate environment * * * .'' Because a prion-related product bears a claim to reduce the infectivity of prions (that poses a threat to human health), an applicant or registrant is required by existing regulations to submit valid data that demonstrate that its prion-related product is effective. As such, today's amendment to the data requirements simply provides more specificity for those who are considering whether to register a product for use on inanimate items and/or environmental surfaces and make claims that the product will reduce the infectivity of prions. In summary, EPA is clearly specifying that efficacy data are required for prion-related products by inserting a new entry in the data tables that are currently found in 40 CFR 158.400 and 40 CFR 161.640.

EPA is also announcing the availability of final test guidelines that the Agency now includes in the OCSPP harmonized test guidelines described in this Unit II.D., as part of the 810 Series of Product Performance Test Guidelines. Specifically, the final guidelines address product performance tests for products with prion-related claims and are identified as ''Product Performance Test Guidelines; OCSPP 810.2700: Products with Prion-Related Claims'' (Ref. 4). The guidelines for products with prion-related claims provide guidance concerning the data and information needed to assess the efficacy of antimicrobial pesticides intended to be used on inanimate items and/or environmental surfaces, and which bear label claims to reduce the infectivity of prions.

On March 31 and April 1, 2009, EPA presented its draft test guidelines to the FIFRA SAP for peer review (Ref. 5), along with a ''white paper'' summarizing the most relevant scientific studies and publications related to the issue of whether a prion is a pest in support of the separate proposed rule on that issue (Ref. 6). The SAP provided comments on the draft guidance document on June 29, 2009 (Ref. 7). EPA has considered the SAP's recommendations and incorporated changes, as appropriate (Ref. 8). In addition, the draft test guidelines underwent interagency review in 2010.

V. FIFRA Mandated Reviews

In accordance with FIFRA section 25(a) and (d), on August 2, 2012, EPA submitted a draft of this final rule to the Secretary of the Senate, the Clerk of the House of Representatives, the Committee on Agriculture in the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry in the United States Senate, the United States Department of Agriculture (USDA), and the FIFRA Scientific Advisory Panel (SAP). In accordance with FIFRA section 21(b), EPA also submitted a draft of this final rule to the Secretary of Health and Human Services (HHS). The HHS and SAP waived review of this final rule. USDA submitted comments on September 5, 2012, to which EPA responded on December 3, 2012 (see docket noted in **ADDRESSES** above).

VI. Statutory and Executive Order Reviews

This action amends existing regulations to include prion as a pest and to add more specificity regarding an existing efficacy data requirement for products intending to make prion-related claims. It does not otherwise amend or impose any other requirements. This rule does not

otherwise involve any significant policy or legal issues, but does impact existing costs.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and was not therefore submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

EPA prepared an economic analysis of the potential costs associated with this action, titled ''Economic Analysis of the Notice of Proposed Rulemaking Concerning the Status of Prion as a Pest under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).'' The Economic Analysis (EA) presents the Agency's assessment of the potential costs and benefits expected to result from this rule. In terms of benefits, the rule will ensure that EPA can protect human health and the environment by subjecting prion-related products to regulation under FIFRA, including all data and labeling requirements. In terms of costs, using pre-2003 costs as the baseline, the incremental costs of this rule per registration action range from $424,000 to $4.72 million (Ref. 9).

The EA presents the costs of various types of registrations under this rule and presents expected incremental costs for three product registration types. The three types of registration actions which are possible under this rule are the registration of: (1) A new active ingredient, (2) a new use product, or (3) amendment of an existing registration to add a new use.

The EA estimates that three firms might seek registrations for major new use products in the first year. If all uses are high exposure (*e.g.,* indirect food uses) for a new active ingredient, the maximum potential total cost to industry in the first year would be approximately $7.05 million, and costs per firm would be approximately $2.35 million. Given the uncertainty that characterizes the market for prion-related products at this time, the Agency did not speculate further on the expected number of registrations in subsequent years. However, registrations that occur after the initial major new use product registrations would probably be major new use amendments. Data requirements would entail only product-specific efficacy data for major new use amendments at a cost of approximately $431,000 per registration action. Approximately 80% of the firms in the pesticide manufacturing industry are small firms with revenues of $22 million, on average. A cost of $7.05 million suggests that the incremental cost per firm of $2.35 million would equal nearly 11% of annual revenues. However, after the initial three registrations, a major new use amendment at a cost of $431,000 would represent fewer than 2% of average annual revenues.

The EA identifies three categories of persons who could be affected by the rule—pesticide registrants, users of prion-related products, and researchers. The registration-related requirements under FIFRA, however, are imposed on the entity that registers the prion-related product. Users of prion-related products and researchers are affected indirectly. The EA summarizes potential qualitative impacts of regulating prion-related products that were expressed by product users to EPA during its outreach efforts to these users.

B. Paperwork Reduction Act (PRA)

This action does not impose any new significant information collection burden that would require additional review or approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* The information collection activities contained in the regulation are already approved under information collection instruments related to:

1. The submission of data to EPA to establish a tolerance or an exemption from the requirement to have a tolerance currently approved under OMB Control No. 2070–0024 (EPA ICR No. 0597).

2. The activities associated with the application for a new or amended registration of a pesticide currently approved under OMB Control No. 2070–0060 (EPA ICR No. 0277).

3. The activities associated with the application for an experimental use permit currently approved under OMB Control No. 2070–0040 (EPA ICR No. 0276).

4. Activities associated with the generation of data in response to a Data-Call-In currently approved under OMB Control No. 2070–0174 (EPA ICR No. 2288).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for certain EPA regulations in 40 CFR are listed in 40 CFR part 9 and in the **Federal Register**, as appropriate.

C. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.,* 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, 5 U.S.C. 551–553, 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 this rule on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201. A small business that manufactures pesticides and other agricultural chemicals as defined by NAICS code 325320 has 500 or fewer employees based on the SBA 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; or

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 this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The amendments do not change existing impacts. Although no small entities have been identified that are directly affected by these amendments, any such impacts are likely to be minimal. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency.

D. Unfunded Mandates Reform Act (UMRA)

Title II of UMRA, 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, this rule is not subject to the requirements of UMRA sections 202 or 205. This rule is also not subject to the requirements of UMRA section 203, because it contains no regulatory requirements that might significantly or uniquely affect small governments. These amendments are unlikely to affect State, local, and tribal governments at

all, and are likely to affect the private sector only trivially.

E. Executive Order 13132: Federalism

This rule does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). State and local governments are rarely pesticide applicants or registrants, so these amendments are not expected to affect these governments. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on Indian Tribes, will not significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes. Tribal governments are rarely pesticide applicants or registrants, so these amendments are not expected to affect these governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045, because it does not establish an environmental standard intended to mitigate health or safety risks, nor is it an ''economically significant regulatory action'' as defined in Executive Order 12866.

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

This action 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.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of NTTAA, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it generally increases the level of protection provided to human health or the environment and thereby not adversely affect any population. This rule does not entail special considerations of environmental justice related issues.

VII. 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 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).

VIII. References

The following is a listing of the documents that are specifically referenced in this document. The docket (under docket ID number EPA–HQ–OPP–2010–0427) includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Environmental Protection Agency. 2004. Considerations of Prions as a Pest under FIFRA. Memorandum to the Record from Susan B. Hazen, Principal Deputy Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances. April 29, 2004.

2. U.S. Environmental Protection Agency. 2012. EPA, Office of Pesticide Programs (OPP), Responses to Comments Received Concerning ''Declaration of Prion as a Pest Under FIFRA and Amendment of EPA's Regulatory Definition of Pests to Include Prion.''

3. U.S. Environmental Protection Agency. 2012. EPA, Office of Pesticide Programs (OPP), Responses to Comments Received Concerning ''Prions: Proposed Amendment to Clarify Product Performance Data for Products With Prion-Related Claims and Availability of Draft Test Guidelines.''

4. U.S. Environmental Protection Agency. 2012. Product Performance Test Guidelines, OCSPP 810.2700: ''Products with Prion-Related Claims.'' Final December 2012.

5. U.S. Environmental Protection Agency. 2009. Product Performance Test Guidelines, Series 810, Draft OCSPP No. 810.XXXX, titled ''Products with Prion-Related Claims.'' Draft dated February 23, 2009.

6. U.S. Environmental Protection Agency. 2009. Scientific Information Concerning the Issue of Whether Prions Are a ''Pest'' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Draft dated December 17, 2008.

7. U.S. Environmental Protection Agency. 2009. Transmittal of Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting Held March 31–April 1, 2009, on ''Scientific Issues Associated with Designating a Prion as a 'Pest' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and Related Efficacy Test Methods.'' Memorandum from Myrta R. Christian, Designated Federal Official, FIFRA Scientific Advisory Panel, Office of Science Coordination and Policy, to Debbie Edwards, Ph.D., Director, Office of Pesticide Programs.

June 29, 2009. See *http://www.epa.gov/scipoly/sap/meetings/2009/march/033109panelmembers.html*.

8. U.S. Environmental Protection Agency. 2010. EPA Responses to Comments by the FIFRA Scientific Advisory Panel Concerning ''Scientific Information Concerning the Issue of Whether Prions Are a 'Pest' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).'' February 17, 2010.

9. U.S. Environmental Protection Agency. 2010. Economic Analysis of the Notice of Proposed Rulemaking Concerning the Status of Prion as a Pest under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

List of Subjects in 40 CFR Parts 152, 158 and 161

Environmental protection, Administrative practice and procedures, Agricultural commodities, Chemical testing, Pesticides and pests, Reporting and recordkeeping requirements, Test guidelines.

Dated: February 21, 2013.

Bob Perciasepe,

Acting Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 152—[AMENDED]

■ 1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y; subpart U is also issued under 31 U.S.C. 9701.

■ 2. In § 152.5, revise paragraph (d) to read as follows:

§ 152.5 Pests.

* * * * *

(d) Any fungus, bacterium, virus, prion, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA section 201(g)(1)) and cosmetics (as defined in FFDCA section 201(i)).

PART 158—[AMENDED]

■ 3. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y, 21 U.S.C. 346a.

■ 4. In § 158.400(d), amend the table under the category ''Efficacy of antimicrobial agents'' by adding a new entry at the end of the category to read as follows:

§ 158.400 Product performance data requirements table.

* * * * *

TABLE—PRODUCT PERFORMANCE DATA REQUIREMENTS

Guideline number	Data requirement	Use pattern									Test substance to support		Test note No.
		Terrestrial		Aquatic		Greenhouse		Forestry	Residential outdoor	Indoor	MP	EP	
		Food crop	Non-food crop	Food	Non-food	Food crop	Non-food crop						
Efficacy of antimicrobial agents													
	*	*		*		*		*		*		*	
810.2700	Products with prion-related claims.	NR	NR	NR	NR	NR	NR	NR	NR	R	NR	EP	1
	*	*		*		*		*		*		*	

* * * * *

PART 161—[AMENDED]

■ 5. The authority citation for part 161 continues to read as follows:

Authority: 7 U.S.C. 136–136y, 21 U.S.C. 346a.

■ 6. In § 161.640, revise the section heading and in paragraph (a) amend the table by adding under the category ''Efficacy of antimicrobial agents'' a new entry at the end of the category to read as follows:

§ 161.640 Product performance data requirements table.

(a) * * *

Kind of data required	(b) Notes	General use patterns									Test substance		Guideline reference No.
		Terrestrial		Aquatic		Greenhouse		Forestry	Domestic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Non-food crop	Food	Non-food	Food crop	Non-food crop						
Efficacy of antimicrobial agents													
	*	*		*		*		*		*		*	
Products with prion-related claims.	*	.....	.....	.....	.....	.....	.....	.....	R	.....	EP *	810.2700.	
	*	*		*		*		*		*		*	

* * * * *

[FR Doc. 2013–04613 Filed 2–27–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1 and 60–2

RIN 1250–ZA00

Interpreting Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of final rescission.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is publishing a final notice rescinding two guidance documents: The Interpreting Nondiscrimination Requirements of Executive Order 11246 with respect to Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Executive Order 11246 with respect to Systemic Compensation Discrimination. Rescinding these prior guidance documents will improve OFCCP's ability to enforce the Executive Order's ban on pay discrimination. It will eliminate a rarely used, ineffective and burdensome compliance procedure. This rescission allows OFCCP to better direct its resources for the benefit of victims of discrimination, the government, contractors, and taxpayers.

DATES: Effective February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Department of Labor's OFCCP enforces Executive Order 11246, as amended, which requires Federal Government contractors and subcontractors to provide equal employment opportunity through affirmative action and nondiscrimination based on race, color, national origin, religion, and sex. Compensation discrimination is one form of discrimination prohibited by the Executive Order. In particular, federal contractors [1] may not discriminate in ''rates of pay or other forms of compensation.'' 41 CFR 60–1.4(a)(1). OFCCP enforces this requirement through review and investigation of contractor pay practices, data and other relevant information for potential systemic and individual evidence of discrimination. In addition, contractors must review and monitor their compensation systems to ''determine whether there are gender-, race-, or ethnicity-based disparities.'' [2] Contractors must maintain records, including but not limited to ''rates of pay or other terms of compensation.'' [3]

OFCCP enforces the Executive Order's nondiscrimination provisions, including the ban on compensation discrimination, consistent with Title VII. Title VII forbids discrimination in employment, which includes paying employees differently on the basis of race, sex or other protected class membership. Congress intended for courts to read this ban broadly. *Franks* v. *Bowman Transportation Co.,* 424 U.S. 747, 763 (1976) (''Congress intended to prohibit all practices in whatever form which create inequality in employment opportunity due to discrimination * * *'') (citations omitted). There have long been three distinct theories of discrimination under Title VII: Individual disparate treatment, ''pattern or practice'' (systemic disparate treatment), and disparate impact. While courts have developed some specific mechanisms for presenting evidence and satisfying the burden of proof under each theory, they consistently hold that there is no single way to prove discrimination.[4] Plaintiffs may rely on any evidence of discrimination, whether direct, circumstantial, statistical, anecdotal, or any combination of such evidence.

This flexibility is critical because discrimination may be difficult to identify. Pay discrimination can be easy to spot, like a clear pattern of paying women less than men in the same job, where they are just as qualified. But it can also be complex, like a practice of discriminating against African-American sales workers in handing out territory assignments—so that no matter how well they perform, they can never have the same earnings opportunities as their white counterparts. Title VII addresses all forms of compensation differences, including those that come from channeling a favored group into the better paying entry level jobs with better long-term opportunities, or where glass ceilings or other unfair promotion practices wrongly block advancement of talented workers on the basis of illegal criteria like race or gender. And even where base wages or salaries are fair, discrimination in access to overtime, or higher paying shifts, or bonuses, can add up to unequal take home pay in violation of federal civil rights law.

Further, because there is so much variation in pay practices across industries, employers and types of jobs, investigating compensation discrimination requires considering evidence and data in context, which is the approach that federal courts have embraced when interpreting Title VII. It is not possible to specify in advance a single test, model or framework that accurately and fairly identifies discriminatory pay differences in every case. Attempting to impose a uniform test for pay discrimination without accounting for case-specific facts creates opportunities for error. It means that some contractors who pay fairly will be wrongly identified as discriminating in pay, and that some workers who were underpaid due to discrimination will be left without a remedy. Investigating and addressing compensation discrimination requires a rigorous fact-based assessment of a broad array of pay practices.

Nevertheless, OFCCP has since 2006 narrowed its focus, following two guidance documents: Interpreting Nondiscrimination Requirements of Executive Order 11246 with respect to Systemic Compensation Discrimination (Standards) and the Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Executive Order 11246 with respect to Systemic Compensation Discrimination (Voluntary Guidelines).[5] The Standards establish analytical procedures to be followed generally by OFCCP when issuing a Notice of

[1] The term ''federal contractor'' or ''contractor'' used in this notice refers to federal contractors, subcontractors, and federally-assisted construction contractors and subcontractors.

[2] 41 CFR 60–2.17(b)(3); *see also* 41 CFR 60–2.17(d) (required internal auditing and reporting system must include compensation).

[3] 41 CFR 60–1.12.

[4] *See, e.g., McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 802 n.13 (1973) (''The facts necessarily will vary in Title VII cases, and the specification of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations''); *Furnco Constr. Corp.* v. *Waters,* 438 U.S. 567, 575 (1978) (title VII approaches to proving discrimination ''not intended to be an inflexible rule'').

[5] The Standards and Voluntary Guidelines were published on June 16, 2006. *See* 71 FR 35124 (June 16, 2006) (Standards) and 71 FR 35114 (June 16, 2006) (Voluntary Guidelines).

Violation (NOV) alleging systemic compensation discrimination. The Voluntary Guidelines provide a methodology for contractors' self-evaluation of their pay practices, required by 41 CFR 60–2.17(b)(3); following that methodology can provide a ''safe harbor'' during compliance reviews.

The Standards and Voluntary Guidelines addressed only a single type of pay practice using limited evidence and a highly specified analytic framework. The Standards did not actually apply to or explain investigation procedures, and left many critical details undefined or subject to potential exceptions. The companion document, the Voluntary Guidelines, attempted to tell contractors exactly how to fulfill their regulatory self-monitoring obligations. Yet the Voluntary Guidelines were similarly inadequate, and contractors rarely utilized them to demonstrate compliance.

In 2010, President Obama created the National Equal Pay Task Force, bringing together the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), the Department of Justice, and the Office of Personnel Management to collectively address pay discrimination under their enforcement mandates. The Director of OFCCP, a member of the Task Force, committed OFCCP to review and revise its enforcement guidance and practices to more effectively address compensation discrimination under Executive Order 11246. OFCCP reevaluated all aspects of its existing approach to addressing compensation discrimination by federal contractors, including (1) Guidance documents, (2) procedures for conducting compliance evaluations, (3) training and best practices for investigating and addressing compensation discrimination, and (4) approaches of other federal agencies including the EEOC and the Department of Justice.

As part of this larger review and revision process, OFCCP assessed the role of the Standards and Voluntary Guidelines, concluding they were inconsistent with the Task Force's goal of improving enforcement. On January 3, 2011, OFCCP published a Notice of Proposed Rescission (NPR), proposing to rescind the Standards and the Voluntary Guidelines in their entirety, and soliciting public comment. 76 FR 62. Because neither 2006 guidance document has proved workable or effective in practice, OFCCP is rescinding both guidance documents effective immediately.

In their place, OFCCP is today committing to provide greater clarity for contractors and improve equal employment protection for workers. First, OFCCP will be applying Title VII principles as the basis for determining whether a contractor has violated the Executive Order's ban on pay discrimination, just as the agency does in assessing contractor compliance with respect to all other employment practices. Second, as explained in Section III below, OFCCP is disclosing its interpretation of specific legal and technical issues to assist contractors in evaluating their own practices and promoting greater voluntary compliance. Third, OFCCP will be providing much greater transparency on questions of investigation practices and procedures—issues the Standards did not address—both in this document as well as via ongoing compliance assistance. Collectively, this information should provide ample notice to contractors of their legal obligations as well as assist them in achieving voluntary compliance.

B. Summary of the Reasons for Rescission

The 2006 Standards set forth a single, specified analytical procedure to be used for determining a violation in all systemic compensation discrimination cases, except in unusual circumstances. Under the 2006 Standards, OFCCP was to apply the same analytic framework regardless of the industry, types of jobs, issues presented, characteristics of workers, or available data. In particular, OFCCP may only establish a systemic compensation violation of the Executive Order by testing narrowly defined groupings of employees based on standards typically used in individual disparate treatment cases. 71 FR at 35127–28, 35140. Under the Standards, OFCCP must use multiple regression analysis to test for pay disparities and must have anecdotal evidence to establish a systemic compensation violation, ''except in unusual cases.'' 71 FR at 35141. As explained above, employment discrimination comes in many forms, which is why Title VII permits a flexible case-specific approach to proof.

The Standards restrict OFCCP's ability to enforce the Executive Order's non-discrimination mandate. The Standards address a single kind of compensation disparity—pay differences among discrete pools of workers limited by job category—to the potential exclusion of other equal opportunity concerns. Pay differences arising from discrimination in job assignments, unequal access to promotional opportunities, channeling and glass ceiling issues can be obscured by the strict grouping requirements of the Standards. The Standards do not favor aggregation and place additional burdens on OFCCP where a pooled regression is used, despite the longstanding legal rule that the proper level of aggregation requires a case by case determination. The regression analysis required under the Standards is not always appropriate or feasible—other approaches may be preferable for certain cases involving very high level or specialized positions or smaller workforces, and cases involving missing or flawed data, among others. The Standards create a special rule for anecdotal evidence in compensation cases that has never been applied in other OFCCP contexts, and which is particularly burdensome for workers who frequently lack meaningful access to information about pay. Fair and effective enforcement requires tailoring the compensation investigation and analytical procedures to the facts of the case based on Title VII principles.

Similarly, the Voluntary Guidelines establish a single one-size-fits-all statistical model that contractors can elect to use in conducting the self-analysis of their pay practices required by 41 CFR 60–2.17(b)(3). As an incentive to encourage contractors to use the analytical procedures contained in the Voluntary Guidelines, OFCCP would deem a contractor, whose self-evaluation meets the procedures outlined in the Voluntary Guidelines, to be in compliance with section 60–2.17(b)(3). OFCCP would then coordinate review of the contractor's compensation practices during a compliance evaluation in the manner specified in the Voluntary Guidelines. 71 FR at 35122. In other words, contractors may provide their own analysis of pay data, based on their own determinations of how to apply the Voluntary Guidelines, and as long as it ''reasonably meets'' the procedures detailed in the Voluntary Guidelines, OFCCP is bound to accept it. Even if another, equally ''reasonable'' analytic approach would reveal systemic compensation discrimination against a protected class of workers, OFCCP would seemingly have to consider the contractor in compliance.

In addition, the Voluntary Guidelines provide little practical benefit. As the comments discussed below demonstrate, few contractors rely on this model for purposes of a compliance evaluation. This assessment is consistent with OFCCP's own experience since 2006, that ''contractors have rarely utilized the analytical

procedures outlined in the Voluntary Guidelines when analyzing their compensation practices under section 60–2.17(b)(3).'' 76 FR at 63. Further, the Voluntary Guidelines, like the Standards, take an overly narrow approach to analyzing potential systemic pay discrimination—which may lead contractors to shortchange the ongoing monitoring required by OFCCP regulations and best practices. The Voluntary Guidelines do not appear to have improved the level or quality of voluntary compliance.

Non-discrimination in pay is a critical issue for workers and their families, and a cornerstone of OFCCP's equal employment protections. As detailed in the NPR, identifying and remedying compensation discrimination has long been an important goal of OFCCP compliance efforts. 76 FR at 62. The Executive Order and the implementing regulations specifically require contractors to ensure pay equity. They place federal contractors under affirmative duties to maintain data, conduct internal reviews and monitor pay practices for potential discrimination, and comply with the Executive Order's ban on discrimination in the paying of wages, salaries, and other forms of compensation. Sec. 202 of E.O. 11246, as amended, 41 CFR 60–1.12; 60–1.4; 60–2.17(b)–(d). Nevertheless, Bureau of Labor Statistics data and numerous research studies indicate that disparities in compensation on the basis of sex and race continue to exist,[6] even after accounting for factors such as the type of job, worker qualifications such as experience and education, and other potential explanations.[7] Further, because many employees do not know how their pay compares to others, OFCCP compliance reviews and contractor voluntary compliance efforts are critical tools for uncovering systemic pay disparities invisible to individual workers. In light of these concerns, OFCCP should no longer limit its analysis or consideration of evidence that points to potential compensation discrimination in violation of the Executive Order. Nor should OFCCP encourage contractors to limit their self-evaluation practices to a single form of inquiry.

The Standards and Voluntary Guidelines may also lead OFCCP to enforcement approaches that are inconsistent with how other federal agencies address pay discrimination. OFCCP is presently working to harmonize its approach with that of other federal enforcement agencies, including the Department of Justice and the EEOC. Neither restricts its analytic and evidentiary framework to a single approach. Along with OFCCP, these agencies have committed to vigorous enforcement of federal non-discrimination mandates. Through this rescission, OFCCP seeks to provide workers the full protection of Title VII anti-discrimination provisions and ensure consistent enforcement in its review of contractor compensation practices.

Finally, by setting special analytical procedures restricting what constitutes proof of discrimination for a particular employment practice, the Standards and Voluntary Guidelines depart from OFCCP's approach to evaluating contractor compliance in other areas. There are no comparable Standards or Voluntary Guidelines for systemic discrimination in hiring, promotion, termination or other employment practices. In those other areas, Title VII principles have proved more than adequate to put contractors on notice of their obligation, to promote voluntary compliance measures, and to define the parameters of a violation. OFCCP has traditionally focused on identifying discrimination through the development of a variety of investigative and analytical tools. Compensation should be no exception.

After considering the comments received, OFCCP concludes that rescinding these prior guidance documents will improve OFCCP's ability to enforce the Executive Order ban on pay discrimination. It will eliminate a rarely used, ineffective and burdensome compliance procedure. This rescission allows OFCCP to direct its resources more efficiently—for the benefit of victims of discrimination, the government, contractors, and taxpayers. These Standards and Voluntary Guidelines have not been useful tools in combating compensation discrimination. OFCCP can better achieve the objectives of the Executive Order—including non-discrimination in pay for the federal contractor workforce—through other methods of investigation and analysis.

Nevertheless, OFCCP takes seriously its obligation to support contractors seeking to comply voluntarily, and wishes to promote transparency and fairness regarding OFCCP practices. The agency will be providing as much clarity as possible regarding its application and interpretation of important legal, factual and technical issues in assessing systemic compensation discrimination, both in this document (*see* Section III, below) and going forward. OFCCP traditionally has established procedures for investigating compensation discrimination, as well as other forms of

[6] According to the latest Bureau of Labor Statistics data, women's weekly median earnings are about 81% of men's. In 2010, women on average earned .81 for every dollar earned by a man. Bureau of Labor Statistics, Women at Work (2011). Through the first three quarters of 2012, that figure increased slightly. *See also* BLS, Current Population Survey, Labor Force Statistics from Current Population Survey, available at *http://www.bls.gov/cps/earnings.htm#demographics;* updated 2012 CPS earnings figures by demographics by quarter *available at http://www.bls.gov/news.release/wkyeng.t01.htm.* And looking at annual earnings reveals even larger gaps—approximately 23 cents less on the dollar for women compared with men. U.S. Bureau of the Census, Income, Poverty and Health Insurance Coverage in the United States, Current Population Reports 2011 (Sept. 2012), *available at http://www.census.gov/prod/2012pubs/p60-243.pdf.* Analyzing the weekly figures can be more precise in certain ways, like accounting for work hours that vary over the course of the year, and less accurate in others, like certain forms of compensation that don't get paid as weekly wages. No matter which number you start with, the differences in pay for women and men really add up. According to one analysis by the Department of Labor's Chief Economist, a typical 25-year-old woman working full time in 2011 would have already earned $5,000 less than a typical 25-year-old man. If that earnings gap is not corrected, by age 65, she will have lost hundreds of thousands of dollars over her working lifetime. White House Council on Women and Girls, The Key to an Economy Built to Last (April 2012), *available at http://www.whitehouse.gov/sites/default/files/email-files/womens_report_final_for_print.pdf.* For women of color, the gap is even greater, approximately .70 on the dollar for African-American women and approximately .60 for Latinas compared with white men based on BLS data, and .64 for African American women and .56 for Latinas based on Census data.

[7] A March 2011 White House report entitled ''Women in America: Indicators of Social and Economic Well-Being,'' found that while earnings for women and men typically increase with higher levels of education, the male-female pay gap persists at all levels of education for full time workers (35 or more hours per week), according to 2009 BLS wage data. Potentially non-discriminatory factors can explain some of the gender wage differences. *See, e.g.,* June Ellenoff O'Neill, The Gender Gap in Wages, Circa 2000, American Economic Review, May 2003, at 309. Even so, after controlling for differences in skills and job characteristics, women still earn less than men. Explaining Trends in the Gender Wage Gap, A Report by the Council of Economic Advisers (June 1998). *See also, e.g.* Ariane Hegewisch, Claudia Williams, Vanessa Harbin, The Gender Wage Gap by Occupation (2012) (women's median earnings less than men in virtually all occupations); Anthony T. LoSasso, et al, The $16,819 Pay Gap For Newly Trained Physicians: The Unexplained Trend Of Men Earning More Than Women, 30 Health Affairs 193 (2011). Ultimately, the research literature still finds an unexplained gap exists even after accounting for potential explanations, and finds that the narrowing of the pay gap for women has slowed since the 1980s. Joyce P. Jacobsen, ''The Economics of Gender 44 (2007); Francine D. Blau & Lawrence M. Kahn, The U.S. gender pay gap in the 1990s: slowing convergence, 60 Industrial and Labor Relations Review, 45 (2006). In addition to the gender pay gap, scholars have found race and ethnicity-based pay gaps that put workers of color at a disadvantage. Joseph G. Altonji and Rebecca M. Blank, Race and Gender in the Labor Market, in, Orley Ashenfelter and David Card, eds., Handbook of Labor Economics 3143 (1999).

discrimination, through instructions for its compliance officers contained in the OFCCP Federal Contract Compliance Manual (FCCM), directives, and other staff guidance materials, and will continue to do so. OFCCP will provide ongoing technical assistance through tools such as written frequently asked questions (FAQs), conference calls, webinars and online chats and will seek opportunities to take questions and get feedback from all stakeholders. OFCCP is not currently contemplating additional formal rulemaking associated with this document.

II. Discussion of the Comments

OFCCP received 22 comments on the NPR from the following: employer associations; employee and other women's and workers' rights associations; named employers, including consultants and law firms focused on employment and personnel practices; a comment from a group of 40 statisticians, economists, sociologists, and psychologists (Social Science Researchers); and one individual comment. OFCCP has considered all of the comments received. Of the 22 comments, ten support the proposed rescission of both the Standards and Voluntary Guidelines, five oppose the proposed rescission of the Standards, and three oppose the proposed rescission of the Voluntary Guidelines—with one comment that recommends partial rescission of the Voluntary Guidelines. The remaining comments do not clearly state a position, but instead comment on particular issues.

With regard to the Standards, comments addressed the following issues: (1) The framework under the Standards for determining the proper comparison groups for analysis; (2) the mandate of the Standards to use multiple regression analysis; (3) the mandate of the Standards that OFCCP have anecdotal evidence; (4) the OFCCP proposal to rely on multiple investigative and analytical methods to address compensation discrimination issues; and (5) cost to contractors should the Standards be rescinded. *See* Section II.A.

With regard to the Voluntary Guidelines, comments addressed the following issues: (1) Whether the Voluntary Guidelines are effective; (2) substantive limitations of the Voluntary Guidelines; and (3) cost to contractors should the Voluntary Guidelines be rescinded. *See* Section II.B.

A. Comments Regarding the Standards

The Standards prescribe procedures that limit OFCCP's ability to determine when a contractor has violated the Executive Order. They restrict permissible evidence and require one form of proof of potential systemic compensation discrimination, except in unusual circumstances. These restrictions govern how to group employees for analysis, the use of multiple regression analysis to decide whether wage differences are discriminatory, and the requirement for anecdotal evidence of compensation discrimination except in unusual cases. These procedures are to be followed regardless of the facts of a particular case.

1. How To Compare Workers for Purposes of Compensation Analysis

Under the Standards, OFCCP can generally only establish a systemic compensation violation where there are statistically significant pay disparities comparing highly specified groups of workers. In particular, OFCCP is to begin by establishing groups of ''similarly situated'' workers on the basis of the positions they hold, and then to test for pay differences only among those workers within each separate group. *See* 71 FR 35140. The Standards make it more difficult for OFCCP to test for larger patterns across groups of jobs. These restrictions include the formal limits on the use of an aggregate (or pooled) statistical analysis, as well as the job-based comparison requirements, which can make it more difficult to investigate the effect that discrimination in job assignment, level or position has on pay.

Nearly half of the commenters addressed how the Standards require OFCCP to compare workers for purposes of analysis. Two commenters specifically identified concerns with the definition of ''similarly situated employees'' or the requirement to group workers a specific way—calling it ''overly stringent,'' ''problematic and easily misinterpreted,'' and inconsistent with ''professional best practices.'' Two commenters explicitly supported the appropriateness of comparing similarly situated employees as described and defined by the Standards on legal grounds.

The commenters supporting rescission raised several specific problems with this aspect of the Standards. A women's rights group pointed out a technical problem with performing separate analysis on each group of similarly situated workers. Especially if these groups are small, the analysis may be ''underpowered''—and therefore unable to accurately detect discrimination when it exists. Another women's rights group expressed concern that the basis for grouping under the Standards could incorporate discrimination. The Standards define similarly situated employees based on position qualifications, even though qualifications can be illegal barriers where they operate to exclude a protected class from the job. The Social Science Researchers noted that a determination of how to group employees for analysis must be made based on the particular facts and circumstances, Title VII principles, and professional best practices. Multiple commenters pointed out that compensation discrimination takes many forms, and that the OFCCP's analysis should be flexible enough to address all pay issues that may exist in a contractor's workforce.

Commenters supporting the Standards on this point largely relied on the view of applicable law underpinning the Standards themselves. For example, one management law firm referred to the Title VII cases cited in the original **Federal Register** notice establishing the Standards and noted that the NPR provided no legal authority to the contrary. An employers' association stated that the Standards follow the EEOC's Compliance Manual and that therefore they represent ''adherence to Title VII principles.'' As explained below, the Standards do not comport with a more comprehensive understanding of applicable legal principles relevant to potential pay discrimination. Nor do they accurately reflect the contents of the EEOC Compliance Manual, which rejects the view that there is a single way to prove discrimination.

OFCCP has concluded that this aspect of the Standards is overly narrow and creates both technical and substantive barriers to effective enforcement. The legal analysis OFCCP used to support its adoption of the Standards in 2006 did not explicitly discuss the most common approaches for proving systemic discrimination. *See* 71 FR 35126–28. The Standards applied a model typically applied in individual disparate treatment cases, limiting the types of evidence and models of proof in systemic cases. Further, the Standards require a specific technical approach that substantially increases the risk that OFCCP would fail to detect improper pay disparities, and limits investigations to a single form of pay discrimination. Thus, as explained in the paragraphs that follow, the Standards hamper OFCCP's ability to ensure contractor compliance with the Executive Order.

The Standards inadequately rely on an inquiry relevant to individual disparate treatment cases to evaluate

systemic discrimination. Individual disparate treatment cases typically proceed under the *McDonnell Douglas* burden shifting framework. *Reeves* v. *Sanderson Plumbing Products, Inc.,* 530 U.S. 133 (2000); *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973). Many individual disparate treatment cases rely heavily on ''comparators''—specifically identified workers who are similarly situated to the plaintiff but outside the protected class. An otherwise unexplained difference in how the employer treated the plaintiff and her comparator permits an inference that the real reason was intentional discrimination.[8]

Virtually all of the cases OFCCP used to support the Standards focus on how to prove individual instances of pay discrimination. *See* 71 FR 35127–28. These cases involve disputes over whether a particular comparator is appropriate or not because of differences in their positions. But there are other ways to prove discrimination in individual cases.[9] More importantly, systemic cases are not based on person to person comparisons but on patterns within a workforce that can transcend specific workers, jobs, locations, or functions.

Proof in systemic disparate treatment cases can go beyond the single scenario of the Standards. Rather than asking whether an employer intentionally discriminated against a specific person, systemic cases ask whether there is a pattern or practice of unequal treatment of a protected class. Plaintiffs must show that discrimination in the workplace manifests as the company's ''standard operating procedure.'' *International Brotherhood of Teamsters* v. *United States,* 431 U.S. 324, 336 (1977); *see also Franks* v. *Bowman Transportation Co.,* 424 U.S. 747, 772 (1976). Plaintiffs may support their case by presenting evidence of a pattern of discrimination against a protected class of workers, regardless of whether they all have exactly the same jobs, responsibilities, supervisors or work locations.[10] This approach does not pre-specify how to test for a pattern of pay or other disparities. Whether systemic discrimination exists at all, exists within one particular position, location or function, or spans multiple jobs, facilities or segments of the workforce, is a factual inquiry that turns on case-specific evidence and data.

In a pattern or practice case of compensation discrimination (or any other type of discrimination) relying on statistical evidence, courts permit a wide range of approaches—evaluating each model based on the facts of the case. Proof frequently turns on the results of a statistical analysis of the compensation paid to a protected class, with controls used to ensure comparison of similarly situated employees and accounting for potentially non-discriminatory explanations for statistical disparities. However, there are no hard and fast rules regarding how to group workers, what controls to use, or how to analyze the pay practices at issue. For example, in *Segar* v. *Smith,* the court found discrimination based on a regression analysis comparing all African-American special agents to white special agents, even though they held jobs that spanned multiple positions and pay grades. In that case, the evidence demonstrated an overall pattern of racial discrimination in compensation after controlling for qualifications and other factors impacting pay. 738 F.2d 1249 (D.C. Cir. 1984). OFCCP relied on a similar approach in the *Harris Bank* case involving systemic pay discrimination against workers holding a variety of different positions.[11]

Courts consistently hold that there is no single correct model or set of factors that must be included in a regression analysis. *Bazemore* v. *Friday,* 478 U.S. 385, 400 (1986); *McClain* v. *Lufkin Ind.,* 519 F.3d 264, 280 (5th Cir. 2008). Proper groupings for purposes of regression analysis are based on a combination of statistical theory and relevant facts, and should be a case-specific determination.[12] To the extent the Standards mandated specific and very narrowly defined groupings in every case, they are not consistent with Title VII principles and not appropriate as parameters to restrict OFCCP enforcement.

By setting limits on how OFCCP tests for pay differences, and by grounding those limits in job similarity, the Standards make it much harder to detect certain forms of pay discrimination. Where an employer discriminates by channeling workers of a particular race or sex into lower paying jobs, by a glass ceiling preventing advancement, or other promotion or job assignment practices, it may be highly inappropriate to use job similarity as the basis for analysis.[13] There are also problems with some of the specific factors for determining job similarity, for example where the contractor has a policy linking additional pay to certain qualifications, and reliance on those qualifications may cause adverse impact.[14] In those situations, the Standards require OFCCP to accept potentially discriminatory decisions or criteria as a neutral justification for pay differences, contrary to longstanding Title VII principles. Defining employees as similar based on their positions is

[8] For example, in *Williams* v. *Galveston Ind. Sch. Dist.,* No 03–40436, 78 Fed. Appx. 946 (5th Cir. 2003), the court found that differences in duties and supervisory roles explained the difference in pay between the individual plaintiffs and the comparators.

[9] Other circumstantial or direct evidence of discrimination can support an individual claim even in the absence of a formal comparator. *See Satz* v. *ITT Financial Corp.,* 619 F.2d 738, 745–46 (8th Cir. 1980). As the EEOC Compliance Manual explains, ''A claim of compensation discrimination can be brought under [title VII] * * * even if no person outside the protected class holds a 'substantially equal,' higher paying job.'' *http://www.eeoc.gov/policy/docs/compensation.html.*

[10] *See, e.g., McReynolds* v. *Sodexho Marriott Svs. Inc.,* 349 F. Supp.2d 1, 9, 21 (D.D.C. 2004) (companywide statistical model covering jobs in multiple grades and locations sufficient for prima facie case of a pattern or practice); *Beckman* v. *CBS,* 192 F.R.D. 608, 618 (D. Minn. 2000) (summary judgment not appropriate where plaintiff alleged a pattern of segregating women in less well-paying jobs and comparisons covered multiple types of jobs); *Stender v. Lucky Stores,* 803 F.Supp. 259, 336 (N.D. Cal. 1992) (proof of systemic discrimination supported by pattern of lower earnings for women across multiple jobs); *Greenspan* v. *United Auto Club of Mich.,* 495 F.Supp. 1021, 1029–33 (E.D. Mich. 1980) (same). Applying an analogous principle in ruling on class certification, courts have agreed that proof of systemic discrimination can be supported by evidence of patterns that span jobs or locations. *See, e.g., Hnot* v. *Willis Grp. Holdings,* 228 F.R.D. 476, 483–84 (S.D.N.Y. 2005) (disputes over statistical models to be resolved by factfinder at liability); *Satchell* v. *Fed. Express,* 2005 WL 2397522, at *7 (under *Teamsters,* proof of pattern and practice can be based on statistical evidence covering workers in multiple jobs and locations); *Warren* v. *Xerox Corp.,* 2004 WL 1562884, at *9 (E.D.N.Y. 2004) (race-based disparities in multiple pay grades relevant to merits of discrimination claim). Courts have also approved consent decrees settling pattern or practice or disparate impact claims of pay discrimination covering multiple positions, levels and locations, *see e.g., Ingram* v. *The Coca-Cola Co.,* 200 F.R.D. 685 (N.D. Ga. 2001); *Shores* v. *Publix Supermarkets,* 1997 WL 714787 (M.D. Fla.).

[11] *OFCCP* v. *Harris Bank,* 1978–OFC–2, ALJ's Recommended Decision on Remand (Dep't. of Labor Dec. 22, 1986). *See also OFCCP* v. *St. Regis Corp.,* 78–OFC–1, ALJ's Recommended Decision (Dep't. of Labor Dec. 28, 1984).

[12] For example, in *Harris Bank* the ALJ noted that analysis of two large groups of jobs that spanned multiple titles and levels—professional and clerical—was appropriate based on the theory of discrimination.

[13] *See, e.g., Beckman* v. *CBS,* 192 F.R.D. 608 (D. Minn. 2000); *Stender* v. *Lucky Stores,* 803 F.Supp. 259 (N.D. Cal. 1992); *OFCCP* v. *St. Regis Corp., supra.*

[14] When the qualifications are not job related or consistent with business necessity, their use would be illegal under title VII, such as offering a higher paying job to workers able to pass a lifting test when the job does not require lifting and women more often fail the test. *Cf., Valentino* v. *U.S Postal Service,* 674 F.2d 56, 67–68 (D.C. Cir. 1982) (relying on qualifications to define groups is potentially more appropriate for high level or specialized positions than for general administrative, technical or clerical jobs that share skill levels).

often appropriate, and OFCCP will continue to use that approach.[15] But it is not the right framework for every single case.[16] By requiring only a single approach to determining who is ''similarly situated,'' the Standards made it much more difficult to address the full range of possible unfair pay practices.

Removing the arbitrary restrictions of the Standards will also align OFCCP practice with the EEOC. The EEOC's Compliance Manual rejects the idea that there is one way to prove compensation discrimination, and distinguishes between individual and systemic approaches. The EEOC's Compliance Manual is careful to point out that its approach to disparate treatment analysis is ''not intended as an exclusive method'' (subsection 10–III.A). And, with respect to using statistics, the Compliance Manual states that ''[t]he decision about whether and how to use statistics to aid in investigation should be made on a case by case basis'' (subsection 10–III.A.3).[17]

In addition to the substantive questions about how to group employees, the Standards attempt to dictate the level of aggregation—traditionally a case-specific inquiry. For example, in *Velez* v. *Novartis,* the plaintiffs' expert report tested for gender-based pay differences by analyzing all sales employees in all jobs together, including in some versions of the analysis a comparison for job level to differentiate between entry-level and more senior employees. 244 F.R.D. 243, 261–62 (S.D.N.Y. 2004). The defense expert analyzed each job level using a separate regression, and the court ruled that it was up to the fact finder to decide which approach was more persuasive.

Under the Standards, OFCCP generally is to perform a separate regression analysis for each of the defined groups of employees holding similar jobs. While the Standards leave open the option of an aggregate analysis, that approach is not preferred and subject to specific technical limitations. *See* 71 FR 35131; 35140–41. Courts have consistently held that the decision to aggregate data is a case-by-case inquiry,[18] and that overly fragmenting a regression analysis makes it harder to detect discrimination when it exists.[19] Further, certain specific technical requirements for using a pooled regression model under the Standards create additional unnecessary across-the-board hurdles that instead should be case-by-case determinations.[20]

Proof of discrimination under the Executive Order and Title VII requires evidence sufficient to support a conclusion that discrimination motivated the decision or that an identified employment practice has an adverse impact on a protected class. That evidence can take many forms. What the appropriate comparison groups are depends on the pay practices at issue, the available data, types of workers, and other case-specific factors. It may be important to test for unjustified differences within a set of workers who are similar on the basis of job, but it may be important to consider other approaches. OFCCP will take a more proactive and rigorous approach to analyzing pay differences that does not place unnecessary barriers in the way of effective enforcement or hinder its ability to protect workers from discrimination.

2. Multiple Regression Analysis

Most commenters discussed the use of regression analysis as directed by the Standards. Eight of the seventeen agree with OFCCP that the agency should not formally restrict its analytic method to multiple regression analysis.

The commenters supporting rescission generally stated that multiple regression is often the appropriate tool, but they also agreed that OFCCP should retain the flexibility to consider all possible evidence of discrimination. The Social Science Researchers concluded that ''OFCCP * * * should utilize this mode of analysis [regression analysis] in investigating possible compensation where it is feasible and appropriate to do so.'' A women's rights group noted that while multiple regression is a ''powerful, versatile method of estimation * * * it is not the ideal means for examining every analytical problem, particularly when working with small samples.'' Commenters explained that using regression analysis may not be appropriate especially where data or sample size limitations could bias the results or where the underlying technical assumptions necessary to support regression analysis cannot be met. A women's rights group and a civil rights group both noted that OFCCP does not require a regression analysis during the investigatory phase of other types of discrimination cases.

Commenters opposing rescission largely agreed that Title VII does not require regression analysis in all cases;[21] however, they challenged the view that the Standards unduly limit OFCCP's choice of methods and

[15] *OFCCP* v. *Astra Zeneca,* 2010–OFC–0005, ALJ Consent Decree and Order (Dep't. of Labor June 6, 2011).

[16] *Harris Bank,* at 25 (''Dr. Killingsworth's decision to group the professional and clerical hires together in one study was clearly correct for this particular issue. The key determination is whether the distinction itself was based upon discriminatory criteria. It is bard [sic] to visualize how the question could have been properly examined without a simultaneous comparison of the employees directly affected. Regressing each subgroup individually would have assumed Harris' initial employment decisions were correct, and included this assumption in the probits.'').

[17] EEOC, Directives Transmittal, Compliance Manual, Section 10: Comp. Discrimination (Dec. 5, 2000), available at *http://www.eeoc.gov/policy/docs/compensation.html.*

[18] *See, e.g., Stagi* v. *Amtrak,* 391 F. App'x. 133, 11 (3d Cir. 2010); *McReynolds,* 349 F.Supp. 2d at 14.

[19] Courts have recognized the value of aggregate data in a variety of circumstances. *Lilly* v. *Harris Teeter Supermarket,* 720 F.2d 326, 336 n.17 (4th Cir. 1983) (aggregate data across years preferred over single year); *Eldredge* v. *Carpenters 46 N. California Cnty Joint Apprenticeship and Training Comm.,* 833 F.2d 1334, 1339 (9th Cir. 1987) (aggregate data over years provides a ''more complete and reliable picture''); *Cook v. Boorstin,* 763 F.2d 1462, 1468–69 (D.C. Cir. 1985) (evidence of discrimination across multiple jobs is relevant to discrimination in a particular job group); *Capaci* v. *Katz & Besthoff,* 711 F.2d 647, 654 (5th Cir. 1983) (improper to fragment data in ways that make statistical tests ''less probative'').

[20] For example, the Standards require a control for job similarity in every pooled analysis. This will frequently be appropriate, but as explained above, in cases involving a concern about discrimination in assignment to job or level, it may not be appropriate. The Standards also require testing for interaction terms in every case where OFCCP is considering pooled analysis, specifically mentioning the Chow test as an example. While this is a standard statistical test, applying it in this particular context is highly disputed by experts, is not always technically feasible, and it has not been required by courts. *See, e.g., Taylor* v. *District of Columbia Water & Sewer Auth.,* 241 F.R.D. 33, 43 (D.D.C. Mar. 13, 2007); *Rossini* v. *Ogilvy & Mather,* 615 F.Supp. 1520, 1522–23 (S.D.N.Y. 1985), *vacated and remanded on other grounds,* 798 F.2d 590 (2d Cir. 1986); *Vuyanich* v. *Republic Nat'l Bank,* 505 F. Supp. 224, 299, 314 (N.D. Tex. 1980), *vacated on other grounds,* 723 F.2d 1195 (5th Cir. 1984).

[21] A management law firm noted ''* * * statistical regression analysis may not be *required* by Title VII (and in fact, no specific methodology is), it is clear from case law that regression analysis is an appropriate method for evaluating pay.'' (Emphasis in original text). A comment signed by various human resources organizations and a management law firm, similarly noted that ''multiple regression has a long and well-established history in Title VII compensation cases.'' Another management law firm went even further, asserting that regression analysis is required under Title VII case law. A consulting group's comment addressed the issue from a different perspective—focusing on the analytic procedures used to prioritize cases for investigation. The consulting group asserted that ''a more robust, widespread, and consistent compensation evaluation system should be installed.'' This commenter recommended that annual submission of electronic compensation data by federal contractors will contribute to an ''improved'' system and using a more robust ''tipping point test'' is needed. The comment concludes that with these changes, ''multiple regression should be used as the sole tool for identifying systemic pay disparities.'' OFCCP has sought input on whether to ask contractors to submit annual data as the comment suggests and how to analyze that data. 76 FR 33372 (June 8, 2011.)

expressed concern regarding potential alternatives. For example, an organization of businesses agreed that ''a multiple regression analysis may not be the appropriate statistical model to analyze all compensation issues, particularly for small sample sizes.'' However, this commenter expressed concern that OFCCP would rescind the Standards without identifying the methods to be used in place of regression analysis. An employers' association makes a similar assessment, stating that ''multiple regression analyses may not be the preferred statistical methodology in all cases * * *'' but fearing ''OFCCP may elect to use less sophisticated statistical analyses in its future compliance evaluations * * *.''

Using a single analytic method to identify compensation discrimination is inconsistent with Title VII's mandate and evidentiary principles. *Watson* v. *Ft. Worth Bank and Trust,* 487 U.S. 977, 995 (1988) (Supreme Court's ''formulations'' for proof of discrimination ''have never been framed in terms of any rigid mathematical formula''). Although regression analysis is a common method of proof in systemic cases, courts have considered statistical techniques other than multiple regression as potential evidence of discrimination.[22] Similarly, published research on discrimination frequently relies on multiple regression, but social scientists use a variety of quantitative and qualitative methods to document differences in hiring, pay or other outcomes on the basis of race and gender.[23] There is no single method of proving discrimination, and it is critical to consider all relevant evidence in order to draw an appropriate conclusion. Most systemic discrimination cases rely on statistical evidence, but as explained in the prior discussion, there is frequent debate over the choice of models, methods and variables; and courts have permitted a variety of analytic approaches.

Social science principles require choosing a method and a model based on the research question and available data;[24] Title VII principles similarly require statistical evidence to be responsive to the issues presented, the underlying facts and the relevant, available data. Multiple regression analysis is frequently the appropriate method; however other statistical or nonstatistical analyses may be better suited, depending on the facts of the case and the available data.

OFCCP has found that the use of multiple regression analysis may be appropriate in some cases and not others. Even in the narrowed context of examining systemic compensation discrimination, its application has limitations. In smaller workplaces, in reviews involving high level or very specialized positions, or in cases where important data are unavailable or unreliable, it may be difficult to identify patterns of discrimination by a single analytic method or type of evidence. OFCCP has not abandoned the use of multiple regression analysis and will continue to use this type of analysis to examine compensation issues where it is feasible and appropriate to do so. Section II.A.4 and Section III discuss more specifically how OFCCP intends to approach the choice of analysis going forward.

3. Anecdotal Evidence

More than half of the commenters addressed the requirement that OFCCP obtain anecdotal evidence to support the issuance of a Notice of Violation (NOV). A majority of these commenters agreed that OFCCP should not specifically require anecdotal evidence to support the issuance of an NOV. The remainder opposed changing the current treatment of anecdotal evidence under the Standards.

Commenters in favor of eliminating this requirement relied on legal and practical considerations. They noted that courts have permitted discrimination cases to go forward without anecdotal evidence. They also stated that anecdotal evidence is much harder to obtain in cases of compensation discrimination because victims are either unaware of the compensation other employees receive or they are expressly prohibited from gaining such information. One women's rights group cited an Institute for Women's Policy Research survey of private and public sector employees in which 50% of respondents and 61% of private sector employees reported that discussing pay was prohibited or discouraged in the workplace.

Commenters in favor of keeping the requirement based their position on either a legal argument or on the view that such a rule places no real burden on the agency. These commenters state that OFCCP is not under a formal restriction, citing to language in the Standards that indicates ''[t]here may be cases in which the statistical analysis is so compelling that an allegation of systemic discrimination is warranted even in the absence of anecdotal evidence of compensation discrimination.'' 71 FR at 35134. They go on to state that it is common in Title VII cases to provide anecdotal evidence to bring ''the cold numbers convincingly to life,'' as the Supreme Court described in the *Teamsters* case. 431 U.S. at 339.

OFCCP concludes that the mandate regarding anecdotal evidence operates as a real barrier to enforcement and should be rescinded. Identifying individuals harmed by pay discrimination is particularly difficult. *Ledbetter* v. *Goodyear Tire & Rubber Co.,* 550 U.S. 618, 645 (2007) (Ginsburg, J., dissenting). Many workers do not know they are underpaid. If OFCCP finds evidence of pay discrimination by federal contractors through its review of data, the agency should not let that discrimination stand simply because the contractor had successfully hidden it from its employees. Federal contractors have special obligations to avoid discrimination, monitor their pay practices and submit to reviews to make certain they are in compliance—regardless of whether any individual applicant or employee actually has knowledge of discrimination.

Further, Title VII does not dictate the use of anecdotal evidence in all systemic cases. As the Supreme Court has explained, statistics may at times be ''the only avenue of proof'' available ''to uncover clandestine and covert discrimination.'' *Teamsters,* 431 U.S. at 339 n.20 (internal citation omitted). In

[22] For example, courts have considered descriptive statistics about the representation of protected groups in certain jobs, or statistical analyses other than multiple regression, in combination with other evidence, in determining proof of systemic discrimination. *See, e.g., Beckman,* 192 F.R.D. at 611; *Greenspan,* 495 F.Supp. at 1029–1033. In addition, in *St. Regis* the ALJ concluded there was a pervasive pattern of wage disparities disfavoring women using statistical techniques other than regression analysis. The wages of numerous small groups of comparable male and female employees were compared. In statistically significantly more groups, the wages of males were higher than the wages of females. The ALJ concluded these differences were attributable to discriminatory job assignments.

[23] When researchers need to delve deeper into potential explanations for differences in outcomes for particular groups, or overcome biases and limitations of linear regression models for particular cases, they have considered alternative techniques. *See, e.g.,* Jaume Garcia, Pedro Hernández and Angel López-Nicolás, How wide is the gap? An investigation of gender wage differences using quantile regression, 26 Empirical Economics 149 (2001)(adjusting estimates of the wage gap to account for increases in the wage scale). Social scientists have also increasingly applied experimental techniques such as paired comparison testing to identify race or sex discrimination in employment and other contexts. *See, e.g.,* Marianne Bertrand and Sendhill Mullainathan, Are Emily and Brendan More Employable Than Lakisha and Jamal? American Economic Review (2004).

[24] *See* Daniel Rubinfeld, Reference Guide on Multiple Regression, in Reference Manual on Scientific Evidence 179, 186–91 (Federal Judicial Center 2000).

some cases, statistics alone can establish discrimination.[25]

Although the Standards do allow OFCCP to proceed without anecdotal evidence in certain circumstances, OFCCP finds this exception to the requirement to be too narrow. No anecdotal evidence should be required for any type of case, much less for a compensation case where it may be extremely difficult or impossible to obtain. Regardless, OFCCP will continue to actively seek anecdotal evidence during its investigations. The agency will evaluate all available evidence—statistical and anecdotal—before making a determination regarding contractor compliance.

4. Multiple Investigative and Analytical Methods

The NPR states that OFCCP will continue to adhere to the principles of Title VII in investigating compensation discrimination and will reinstitute flexibility in its use of investigative approaches and tools. Generally, the commenters, whether supporting or opposing rescission of the Standards, acknowledged that multiple investigative and analytical methods for addressing potential compensation discrimination may be used by OFCCP.

A number of commenters expressed support for OFCCP's position in this regard. Specifically, a women's rights group stated that, ''[i]t is critical for OFCCP to have a full complement of investigative tools and strategies at its disposal to be used at the various stages of the investigation and litigation process.'' A civil rights organization stated, ''OFCCP must be permitted to exercise discretion to investigate compensation cases in the same manner that it exercises discretion in other types of cases.'' The Social Science Researchers noted that OFCCP should be able to choose an analytic method based on factors such as sample size, data availability, or other circumstances.

Some commenters, opposing rescission of the Standards, raised two concerns with the statement that OFCCP will reinstitute flexibility in its use of investigative and analytical tools as it relates to compensation discrimination. These commenters expressed concern that this would result in inconsistent enforcement and a lack of guidance for contractors. A comment signed by various human resources organizations and a law firm stated that ''a contractor has a right to know the standards by which it is being judged.'' Further it urges that ''a rescission of the Standards without new standards in place would be damaging to both the spirit and enforcement of equal employment opportunity.'' Additionally, this commenter challenged OFCCP's statement that it adheres to Title VII principles and asserts that ''OFCCP's interpretation of Title VII principles in the proposed rescission is not consistent with the legal standards established in case law * * *.'' An employers' association noted agreement with OFCCP's statement that compensation investigations and analytical procedures should be tailored to the facts of the case based upon Title VII principles. However, this commenter also expressed concern that flexibility in OFCCP's use of investigative approaches and tools would result in ''inconsistency and confusion.'' A comment submitted by a law firm offered that, if ''* * * OFCCP believes other methodologies may be appropriate for identifying systemic compensation discrimination under other circumstances, the Standards should be modified appropriately, but not discarded all together.''

These comments involving potential inconsistency and undue flexibility raised one specific past OFCCP practice that involves the so-called ''pay grade theory.'' This method made a comparison of average pay differences using a particular employer's pay grade, salary band or similar system to draw conclusions about pay discrimination. The method made assumptions that workers in the same pay grade were by definition similarly situated. 71 FR 35136–37. The Notice adopting the Standards explicitly grounded the need for the Standards on the view that this approach was legally untenable. 71 FR 35125–26. Because concerns about the pay grade model animated the original Standards, multiple commenters expressed alarm that this rescission means a return to the prior model.

That is not OFCCP's intent in rescinding the Standards. On the contrary, both approaches suffer from the same flaw. The Standards simply replaced one across-the-board framework with another. Neither permits careful case-specific consideration of the pay practices and workers at issue and the available data and evidence. OFCCP does not view employer pay grades as per se evidence of similarity; rather they are one possible relevant factor among many others. However, OFCCP also has determined that it was a vast overcorrection to address the potential pitfalls of the ''pay grade'' theory by requiring multiple regression analysis in all cases, or looking to only the narrowest possible comparisons of workers.

OFCCP does not believe that increased flexibility necessarily leads to greater inconsistency, and is committed to ensuring that it does not. Flexibility is needed to allow OFCCP to adapt its approach to the uniqueness of a given case within the framework of Title VII case law. Flexibility also ensures that OFCCP's methodology reflects new legal developments, new analytic practices, and new workplace practices, as well as the relevant nuances of the contractor's workforce and practices. The use of more than one approach to investigate and analyze compensation issues is necessary because of the complexities of these types of investigations. The particular tool, or combination of tools, depends upon the facts of a specific case, and includes consulting with labor economists and other experts, as appropriate.

Further, OFCCP is committed to ensuring consistency in conducting its compliance activities. OFCCP adheres to Title VII principles in developing and applying its compliance policies and procedures. The OFCCP FCCM, directives, and staff training provide necessary guidance to prepare compliance officers to address compensation issues. These tools, used in conformance with the applicable regulations, provide the structure within which compliance officers operate. OFCCP has begun updating materials and implementing a comprehensive training program to ensure that its staff investigate pay discrimination effectively, rigorously, and fairly, consistent with prevailing law and the policy goals animating the Executive Order. In addition, OFCCP will be conducting regular quality audits of its compensation investigations.

Because of the requests from the contractor community for more transparency on OFCCP's procedures for reviewing compensation practices, the agency commits to take specific steps to support future compliance assistance in this area. First, Section III below sets out some specific details regarding how OFCCP intends to apply Title VII principles in the context of its investigations. Second, OFCCP will

[25] *Teamsters,* 431 U.S. at 339 (''We have repeatedly approved the use of statistical proof, where it reached proportions comparable to those in this case, to establish a prima facie case of racial discrimination in jury selection cases, *see, e.g., Turner* v. *Fouche,* 396 U.S. 346; *Hernandez* v. *Texas,* 347 U.S. 475; *Norris* v. *Alabama,* 294 U.S. 587. Statistics are equally competent in proving employment discrimination.'') (S.Ct. and L. Ed. citations omitted). *Accord, Palmer* v. *Schultz,* 815 F.2d 84, 90–91 (DC Cir. 1987); *Rossini,* 798 F.2d at 604; *OFCCP* v. *Greenwood Mills Inc.,* 89–OFC–39, Decision and Order of Remand at 3 (Dep't. of Labor Nov. 20, 1995); *OFCCP* v. *Jacksonville Shipyards,* 89–OFC–1, Decision and Order of Remand at 6, (Dep't. of Labor May 9, 1995).

continue to provide compliance assistance to the contractor community through written materials such as case examples, frequently asked questions, and similar materials. Finally, OFCCP will provide online and in-person opportunities for interactive discussion, such as webinars, online chats, and compliance assistance workshops.

5. Cost to Contractors

A few commenters raised concerns regarding the cost to contractors if the Standards are rescinded, stating that without the Standards in place, contractors will incur unwarranted costs in their attempts to be in compliance. A management law firm noted, ''[c]ompensation analysis is not only nuanced and complex, but it also is costly. If contractors are required to navigate the nuance and complexity and absorb these costs, they are at least entitled to transparency in the standards they should use, as well as those OFCCP will use, when doing so.'' The commenter recommended that ''retaining and modifying the Voluntary [sic] Standards and Guidelines to reflect improvements would be one way to do this.'' Simply modifying the existing guidance is not a viable option. OFCCP has not traditionally developed special procedural rules for a single employment practice, instead using directives and other internal guidance to the field. That approach allows the agency sufficient flexibility to respond to changes in case law or the workplace.

For contractors already taking their compliance obligations seriously, the rescission should have little impact on cost. Existing regulations mandate that contractors engage in regular and proactive review of their compensation practices and pay data. Regardless of whether the Standards addressed the full range of potentially discriminatory pay practices, contractors have an independent legal obligation not to discriminate and have affirmatively committed to practice equal employment opportunity as a condition of the privilege of federal contracting. OFCCP is aligning its enforcement procedures with the scope of illegal pay discrimination under Title VII, and ensuring that workers and their families do not bear the cost of unfair discrimination. Further, OFCCP has committed to providing the requested transparency to alleviate potential concerns regarding unnecessary costs as a result of the rescission.

B. Comments Regarding Voluntary Guidelines

1. Contractor Use of the Voluntary Guidelines

In OFCCP's experience, contractors rarely use the Voluntary Guidelines to demonstrate their compliance with the Executive Order. Multiple commenters agreed with OFCCP's assessment, noting that fact warranted rescission of the Voluntary Guidelines. According to an organization of businesses, the Voluntary Guidelines have ''limited utility and significant burden'' and should therefore be rescinded. A consulting group, while identifying potential benefits of the Standards and Voluntary Guidelines, noted that based on their experience conducting ''pro-active compensation reviews for federal contractors,'' pay discrimination continues to be a problem. They observed that ''the majority of the contractor community did not (unfortunately) go along with the spirit and letter'' of the 2006 guidance.

However, other commenters asserted that contractors have in fact used the Voluntary Guidelines—although not for the intended purpose of OFCCP compliance reviews. These comments stated that contractors use the Voluntary Guidelines for internal self-evaluation purposes without taking advantage of the ''compliance coordination incentive option.'' In the experience of these commenters, contractors perform their compensation analysis under attorney-client privilege and wish to protect it from disclosure. A comment signed by various human resources organizations and a law firm cited two surveys it conducted (with 113 contractors and 33 compensation ''experts'' responding), which found that 61.3% of the contractors surveyed used the Voluntary Guidelines. This commenter notes that ''OFCCP may be confusing a contractor's use of the [Voluntary] Guidelines with contractor's use of the Compliance Coordination Incentive Option (*i.e.,* voluntarily submitting the results of an equity analysis before any triggers have been identified) which our survey indicates is used by fewer than 6% of contractors.'' Some commenters expressed concern that without the Voluntary Guidelines, any incentive to self-evaluate would be diminished. A law firm noted that if rescinded ''* * * many contractors will be disincentivized from conducting robust self-analysis that permit them to correct problematic disparities [in compensation].''

While it may be true that some contractors privately use the Voluntary Guidelines to predict how OFCCP will evaluate their compliance under the Standards, contractors rarely use them in their interactions with OFCCP. As previously mentioned, OFCCP intends to engage in active compliance assistance regarding compensation analysis. This assistance, as well as the discussion at Section III, below, will provide contractors with notice about how the agency intends to approach investigations of compensation issues and support voluntary compliance activity.

Importantly, even in the absence of the Voluntary Guidelines or some similar explicit instructions for performing pay audits, contractors remain independently obligated to conduct self-evaluations of their compensation practices as required by 41 CFR 60–2.17(b)(3). They are independently obligated to refrain from pay discrimination in violation of the Executive Order and Title VII, so self-monitoring would be prudent even if not required. In addition to the OFCCP, they are subject to potential enforcement actions by the EEOC or Department of Justice or litigation from private plaintiffs. There is no basis to conclude that the Voluntary Guidelines' purely voluntary, rarely utilized and potentially burdensome procedure is the only available mechanism for self-evaluation.

2. Substantive Limitations of the Voluntary Guidelines

In addition to the failure of contractors to use the Voluntary Guidelines, OFCCP in the NPR discussed substantive problems with how the Voluntary Guidelines evaluated potential pay discrimination. A majority of commenters addressed the substantive approach of the Voluntary Guidelines. Over half of those commenters agreed with OFCCP's assessment that the analytical model detailed in the Voluntary Guidelines has not been an effective enforcement strategy, while the remainder defended the approach under the Voluntary Guidelines.

Some commenters noted similar legal and practical deficiencies between the substantive framework of the Voluntary Guidelines and that of the Standards, such as overly narrow groupings and analytic requirements. Several commenters noted the problems with deferring to a contractor analysis of pay, especially where that was not the approach for investigating other types of employment practices.

Other commenters opposed OFCCP's position. A consulting group states that the Voluntary Guidelines are ''technically rigorous and sound in

almost every regard.'' An employers' association stated that it had no objection to rescission of the ''coordination'' feature of the Voluntary Guidelines but ''the remaining portions of the guidelines and the interpretive standards have served as useful blueprints for both OFCCP and federal contractors interested in monitoring compensation patterns for potential systemic discrimination.'' Two commenters stated that the Voluntary Guidelines conform to Title VII principles. A comment signed by various human resources organizations and a management law firm, citing to the two surveys which included 113 contractors and 33 compensation experts as participants in the surveys, stated that ''[a]lthough contractors and experts might disagree with some of the individual standards of the current Guidelines * * * 84% of contractors [surveyed] believe the Guidelines increase fairness of an audit by standardizing the process.''

Just like the Standards, the Voluntary Guidelines favor a highly limited analysis that may fail to uncover discrimination in pay. The problems with the proposed analytic groupings are the same for the Standards and the Guidelines—as explained in Section II.A., they are overly narrow, inconsistent with Title VII principles and fail to address the variety of potential types of pay discrimination. These limits are magnified by the fact that the Voluntary Guidelines establish specific numerical thresholds to define statistical coverage, group size, and application of regression analysis. The Voluntary Guidelines define those limits across the board, in advance, and without any other information about the pay practices at issue, the types of workers, the number of explanatory factors, or the quantity or reliability of the available data. That one-size-fits-all approach lacks analytic rigor and legal foundation. It is unlikely to be effective at distinguishing between contractors who are in compliance with the Executive Order and those who are not. And it is therefore unlikely to be a useful or appropriate self-evaluation tool.

The Voluntary Guidelines were always optional, but as an officially recommended OFCCP method, these substantive limitations become particularly problematic. Contractors assumed, even if they did not use the Voluntary Guidelines for compliance coordination, that following their dictates would guard against any charges of discrimination in pay. By discouraging any broader examination of pay disparities, the Voluntary Guidelines created a false promise of compliance serving neither the interests of contractors nor of workers.

There is an additional problem specific to the Voluntary Guidelines—the compliance coordination procedure itself. Although rarely used, it is still in conflict with the OFCCP's goal of fully addressing pay discrimination in the contractor workforce. Because compliance coordination requires deference to any analysis that ''reasonably meets'' the Voluntary Guidelines, and because the Voluntary Guidelines take an overly narrow view of what constitutes discrimination, OFCCP may be prevented from addressing legitimate violations of the Executive Order. There is no reason to have such a compliance coordination mechanism, and especially not one for a specific employment practice. OFCCP does not formally defer to contractor determinations of applicant or promotion pools, steps of hiring procedures, job groups in Affirmative Action plans, or the many other factual issues relevant to evaluating compliance in other areas. Nor should OFCCP defer to contractor decisions about how to test for pay differences.

In the absence of the Voluntary Guidelines, contractors may continue to choose a self-evaluation method appropriate to assess potential pay disparities among their workforce. OFCCP will not be mandating any specific methodology. However, the principles outlined in Section III, below, should be useful to contractors devising a self-audit program. Under section 60–2.17(b)(3), contractors must be assessing specifically ''whether there are gender-, race-, or ethnicity-based disparities'' in compensation, and under section 60–2.17(d) any self-audit program must be ''periodic'' and must include specific internal reporting to management of results. OFCCP will assess compliance with these aspects of the regulations by determining whether the scheduled reporting mechanism meets these standards.

3. Cost to Contractors

Several commenters spoke to the issue of cost to the contractors should the Voluntary Guidelines be retained or rescinded. They expressed concern regarding increased costs to the contractors in terms of the ''absence'' of any guidance. A federal contractor organization, referring to both the Standards and Voluntary Guidelines, noted that ''[i]n the absence of such guidance, many employers, particularly smaller and mid-size employers without the 'deep pockets' to hire costly third-party experts, will be discouraged from conducting any type of proactive self-analysis.'' Taking a different approach to the issue of costs to the contractor, an organization of businesses, supporting rescission of the Voluntary Guidelines, stated that ''* * * the [Voluntary] Guidelines ignore the burden associated with developing sophisticated regression models that would satisfy the standards articulated by OFCCP. The cost and complexity of conducting such analyses is too much for many [of our] members to undertake on an annual basis.''

Speculations about potential future costs is not a basis to retain a rarely used, ineffective and potentially burdensome compliance regime. This is particularly true where the current approach may already be costly for some contractors, and where it clearly fails to advance the agency's core policy objective.

OFCCP is taking steps to mitigate any potential cost or burden associated with rescinding the 2006 guidance. In addition to the discussion in Section III below, OFCCP will be providing written materials, such as FAQs, and compliance assistance sessions going forward—clearly describing its investigative procedures and interpretation of key issues. This should make it easier for contractors to assess their own practices. It will also avoid the possibility that the absence of guidance imposes a cost on contractors.

C. General Comments Regarding the Need for Formal Rulemaking

Numerous commenters discussed the OFCCP proposal to communicate its procedures for investigating and analyzing compensation discrimination through the traditional means of using its compliance manual, directives and other staff guidance. A few commenters supported OFCCP's use of the same methodology for establishing policy and procedures as it uses in addressing other discrimination issues, noting that the use of its compliance manual, directives, and other similar guidance have been effective.

Several commenters raised concerns regarding OFCCP's decision not to use formal rulemaking. This was coupled with comments that by not using formal rulemaking, OFCCP is not being transparent in its actions. An employer association noted that if OFCCP rescinds the Standards and Guidelines, ''new guidelines should be established through a formal public rulemaking process that mirrors the EEOC's enforcement of Title VII.'' A management law firm asserted that the proposed approach ''* * * moves from a transparent, consistent approach to

compensation analysis by OFCCP to a more covert, possibly ever-changing approach.''

Another management law firm challenged the view that OFCCP has not traditionally addressed investigation standards through formal rulemaking, citing the Uniform Guidelines on Employee Selection Procedures, the Sex Discrimination Guidelines, and the Internet Applicant Rule. The Executive Order implementing regulations establish legal requirements; they do not prescribe or limit the models of proof that the agency may use to demonstrate noncompliance. OFCCP has traditionally established investigation procedures through subregulatory materials such as compliance manuals, directives, and training and will continue to do so.

Because OFCCP adopted the Standards and Voluntary Guidelines by means of the notice and comment process, OFCCP has decided to take subsequent action regarding the specific published guidance in the same manner. However, OFCCP's general practice has been to develop specific investigative procedures for all of its programs through training programs, internal guidance documents, the FCCM, and similar materials. OFCCP has developed and conformed its investigative procedures based on its interpretation of Title VII principles as the law has developed over time. OFCCP will continually refine these procedures to ensure that they are as effective and efficient as possible. In addition, OFCCP plans to provide written materials and compliance assistance as explained above. Going forward, OFCCP will provide as much transparency and public disclosure as possible about its procedures for investigating compensation discrimination. Technical assistance will include tools such as written Frequently Asked Questions, webinars, conference calls, online chats, and presentations, which also provide opportunities for stakeholder dialogue and feedback. The comments received in response to the NPR do not present a compelling argument for OFCCP to unnecessarily restrict its ability to be responsive and timely in this regard.

D. Statutory and Regulatory Reviews

Executive Order 12866 and Executive Order 13563 (Regulatory Planning and Review)—This rule has been designated an ''other significant'' regulatory action, although not economically significant, under Executive Order 12866. The public was provided a meaningful opportunity to provide input on this document through a 60-day comment period on a Notice of Proposed Rescission issued on January 3, 2011.

Paperwork Reduction Act—The Paperwork Reduction Act (PRA), 44 U.S.C. 35, does not apply to this document because it does not involve any collection of information subject to the approval of the Office of Management and Budget. The information reviewed under the Title VII framework described in this document is collected and reviewed as a result of a desk audit of a contractor's or subcontractor's employment practices. The information collected during the desk audit is covered under OMB Control Number 1250–0003. The compensation analysis described in the Notice occurs after OFCCP compliance officers identify one or more indicators of compensation discrimination during the desk audit that warrant a more in-depth investigation or a compliance evaluation. Pursuant to 5 CFR 1320.4(a)(2), the PRA does not apply to information collections during an ''administrative action, investigation, or audit involving an agency against specific individuals or entities.''

Regulatory Flexibility Act—OFCCP determined that, pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.,* this rescission does not require a regulatory flexibility analysis. Agencies must conduct a regulatory flexibility analysis for any regulatory action that requires a notice of proposed rulemaking. 5 U.S.C. 603(a). The Notice provides subregulatory guidance to contractors and subcontractors regarding OFCCP's application of Title VII principles to compensation discrimination evaluations. Therefore, a regulatory flexibility analysis is not required.

E. Conclusion

After careful consideration of these comments, OFCCP concludes that the Standards and Voluntary Guidelines impede the agency's ability to detect and investigate compensation discrimination, which disserves workers, contractors, and the agency. They require an overly narrow definition of what may constitute systemic compensation discrimination, encourage a less rigorous approach to self-evaluation, and preclude full enforcement of the Executive Order ban on pay discrimination. There should be no unnecessary barriers to enforcing the promise of equal opportunity for workers, and certainly not with respect to ensuring non-discrimination in pay.

OFCCP has concluded that the Standards and Voluntary Guidelines have failed to meet the objectives they were designed to address. They significantly undermine the ability of the agency and contractors to vigorously investigate and identify compensation discrimination consistent with Title VII principles. OFCCP has developed and will continue to develop more effective methods for investigating and addressing compensation discrimination. OFCCP rescinds the Standards and Voluntary Guidelines in their entirety.

Going forward, OFCCP will follow Title VII principles in investigating and analyzing compensation discrimination. The agency proposes to make its treatment of compensation cases consistent with other types of OFCCP discrimination investigations. With the rescission of the Standards and Voluntary Guidelines, OFCCP will focus on the case-by-case assessment of compensation discrimination investigation procedures, and provide clear and consistent guidance to its staff, contractors, and the public regarding its approach.

III. Applying Title VII Principles To Evaluate Whether Contractor Pay Practices Comply With Executive Order 11246

As explained above, OFCCP is rescinding the 2006 guidance documents to ensure its enforcement practices address all forms of pay discrimination that may violate Title VII. In order to assist contractors seeking to comply, and to provide transparency, OFCCP is setting forth its interpretation of certain significant legal and technical issues. This will provide notice of the standards OFCCP intends to rely upon when conducting compliance evaluations, and the standards OFCCP will be instructing its compliance officers to follow.

A. Investigation Procedures

Under Executive Order 11246 and its implementing regulations, contractors may not discriminate in ''rates of pay or other forms of compensation;'' [26] and must review and monitor their compensation systems to ''determine whether there are gender-, race-, or ethnicity-based disparities.'' [27] Contractors must maintain records, including but not limited to ''rates of pay or other terms of compensation.'' [28] During compliance evaluations, OFCCP requests compensation data and analyzes contractors' compensation systems and practices to determine if

[26] 41 CFR 60–1.4

[27] 41 CFR 60–2.17(b)(3), (d)

[28] 41 CFR 60–1.12

discrimination exists and, if so, how it should be remedied.

OFCCP's approach to investigating and enforcing non-discrimination in compensation follows Title VII principles. The approach involves factual investigation, and data and legal analyses, which allow OFCCP to identify and remedy all forms of compensation discrimination. OFCCP will tailor the compensation investigation and analytical procedures to the facts of the case as appropriate under Title VII. This case-by-case approach to compensation discrimination includes the use of a range of investigative and analytical tools. Statistical analyses and non-statistical analyses, such as the use of comparators or cohort analysis, will be applied as feasible and appropriate given available data and evidence, and the factual issues being studied. OFCCP will seek anecdotal evidence, but will investigate and remedy instances of compensation discrimination regardless of whether individual workers have reported being underpaid.

This approach is designed to eliminate unnecessary barriers to OFCCP's ability to protect workers from discrimination. It ensures OFCCP fully takes into account any possible explanations or responses from contractors, and that OFCCP conducts an analysis tailored to a contractor's specific compensation systems and practices.

B. Reviewing Contractor Pay Practices

In particular, OFCCP will consider five principles when reviewing contractor pay practices: 1. Determine the most appropriate and effective approach from a range of investigative and analytical tools; 2. Consider all employment practices that may lead to compensation discrimination; 3. Develop appropriate pay analysis groups; 4. Investigate large systemic, smaller unit and individual discrimination; and 5. Review and test factors before including them in analysis. Each of these is explained in more detail below.

1. Determine the Most Effective and Appropriate Approach From a Range of Investigative and Analytical Tools

Investigation of potential compensation discrimination presents complex and nuanced issues. The choice of the best approach for a case depends upon the underlying facts, the available data, and the contractor's compensation system and practices. As such, OFCCP takes a case-by-case approach to analyzing compensation issues. In every case there are three key questions to be addressed: a. Is there a measurable difference in compensation on the basis of sex, race, or ethnicity? [29] b. Is the difference in compensation between employees comparable under the contractor's wage or salary system? c. Is there a legitimate (*i.e.* nondiscriminatory) explanation for the difference? OFCCP will conduct an appropriate factual investigation, data and legal analyses to address each of these questions. An investigation may include analysis of workforce data and contractor compensation policies and practices; interviewing personnel and employees; examining payroll and Human Resource Information Systems (HRIS) data and records; conducting statistical analyses, such as regression analysis; and non-statistical analyses, such as comparative and/or cohort analysis, and consulting with statistical analysts, labor economists and other experts; as well as examining other relevant information.

At the early phase of a scheduled compliance evaluation, OFCCP may use a range of preliminary analysis techniques to determine whether further review is warranted to make a final determination of compliance, and to assist offices in prioritizing investigative resources. As a compliance evaluation moves from the desk audit to an onsite investigation and a final determination regarding compliance, OFCCP will review and refine the approach in light of further information provided by the contractor or developed through investigation. All ultimate determinations of compliance will be based on a rigorous, appropriate and legally sound analysis of the facts and data.

2. Consider All Employment Practices That May Lead to Compensation Discrimination

OFCCP will examine all employment practices that have the potential to lead to compensation disparities that are relevant given the case-specific facts and data. Compensation includes any payments made to, or on behalf of, an employee as remuneration for employment, including but not limited to salary, wages, overtime pay, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options, profit sharing, and contributions to retirement. The compensation a group of employees or an employee receives may be negatively affected by denial of equal access to certain earnings opportunities. OFCCP will examine employee access to opportunities affecting compensation, such as: Higher paying positions or job classifications, work assignments, training, preferred or higher paid shift work, and other such opportunities. OFCCP will also examine policies and practices that unfairly limit a group's opportunity to earn higher pay, such as: ''Glass ceiling'' issues; and access to overtime hours, pay increases, incentive compensation, and higher commission or desired sales territories. OFCCP will tailor the approach and tools to be used to examine possible unequal access and denial of opportunity issues based on the compensation practices relevant to a particular case. Differences may be observed with regard to base salary; job assignment or placement; opportunities to receive training, promotions, and other opportunities for advancement; earnings opportunities; and differences in access to salary increases or add-ons, such as bonuses.

3. Develop Appropriate Pay Analysis Groups

If the data allow, OFCCP will begin by testing for statistical significance on large groups of employees. The analysis may be based on groups that are larger than individual job titles and job groups. By combining employees into appropriate pay analysis groups, using statistical controls as necessary for title or level, OFCCP will be able to more easily identify potential systemic discrimination needing further investigation and potential remedy. Additionally, if the data allow, OFCCP will analyze pay disparities based on protected class status that cannot be explained by neutral job-related factors, *e.g.,* identifying potential placement or classification issues for further investigation.

A pay analysis group is a group of employees subject to a single statistical framework, model or test. For compensation analysis, a group may be limited to a single job or title, may be performed separately on multiple distinct units or categories of workers, or may be a pooled regression analysis that combines employees from multiple job titles, units, categories and/or job groups that are comparable for purposes of the contractor's pay practices. Where a combination of job titles or jobs at multiple levels is used, it may be appropriate to control for title and level within the group, in order to ensure comparison of similarly situated

[29] In situations where there is sufficient data and analytic power to use regression analysis, a measurable difference generally means a statistically significant difference, two standard deviations, consistent with title VII. In the situation of disparities in small group and/or individual compensation, a measurable difference and sufficient evidence will be determined in conformance with title VII principles.

workers (see below). The size and definition of a group, including questions such as whether to include title or level as a control in the analysis, depends on available data and evidence and the compensation practices at issue. Reasonable differences may exist among workers in a pay analysis group as long as these differences are properly accounted for in the statistical analysis to be conducted. OFCCP will conduct regression analysis on the pay analysis groups to determine whether statistically significant disparities in compensation exist. Statistical testing for practices that impact compensation such as job assignment may require a different model than tests for within job compensation differences.

OFCCP will develop pay analysis groups by considering the following, at a minimum: The particular industry, the types of jobs and compensation at issue, the contractor's actual compensation practices and available data. Compensation practices may differ by role (*e.g.,* executives, managers, supervisors and individual contributors), by level (with higher-level employees tending to receive additional or alternate forms of compensation), by function (such as sales employees who are paid on commission), by unit (department, division, location, etc.) and/or by job classification (exempt or non-exempt, part time or full time, bargaining unit, etc.). This information may be found through a review of the contractor's policy or training documents, description of its compensation system or practices, compensation data, records and coding, job descriptions, and other facts relevant to determining groups, such as the ability of workers to rotate or transfer among different positions within a business unit, a common hiring or selection process, a common performance review practice or other common identifiable employment practice relevant to compensation.

As the results of the initial analysis and facts warrant, OFCCP will refine the analysis, and may conduct subsequent statistical and/or non-statistical tests of smaller units or individuals.

4. Investigate Large Systemic, Smaller Unit and Individual Discrimination

OFCCP will investigate possible large systemic, smaller group or unit, and individual compensation discrimination. Pay analysis groups are to be developed to examine possible systemic issues. Systemic discrimination may be a pattern or practice of discrimination or an identified employment practice with adverse impact that affects multiple employees or groups of employees or applicants. When OFCCP completes analysis of larger pay analysis groups, or in cases where the data are inappropriate or insufficient for regression analysis, the agency will examine the data to further address possible compensation discrimination involving specific job titles, particular units or locations, or other smaller groupings. These additional analyses will be used to confirm, refine or supplement the larger analysis.

After analyzing the data for potential systemic discrimination in larger and smaller groups, OFCCP may conduct comparative analyses of very small groups or individuals to determine if discrimination has occurred, and if there is evidence sufficient to support an inference that pay differences are due to discrimination. The mere fact that there are pay differences between comparators, without any other evidence of pretext or other indicia of possible discrimination, generally is not sufficient to find a violation of E.O. 11246.

For purposes of evaluating compensation differences, the determination of similarly situated employees is case specific. Relevant factors in determining similarity may include tasks performed, skills, effort, level of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. In some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others. For example, when evaluating a job assignment issue, workers are similarly situated when their qualifications are comparable, but they are assigned to jobs at different levels. Employees are similarly situated when they are comparable on factors relevant to the compensation issues presented. Who is similarly situated for purposes of an individual analysis or review of a single specific employment decision may be determined based on different criteria than when conducting a systemic discrimination analysis.

5. Review and Test Factors Before Including Them in Analysis

OFCCP will evaluate, on a case-by-case basis, information from the contractor regarding the factors the contractor considered in making compensation decisions. A factor is an element that the contractor offers to explain differences in employee compensation under its compensation system and practices. Factors may include internal and external elements potentially affecting compensation. A factor may be a qualification or skill that the worker brings to the position such as education, experience, etc. It may also be a job-related element such as position, level or function; tenure in position; performance ratings, etc.

As in any investigation, OFCCP will review and test the factors offered before accepting them as appropriate for inclusion in the analytical model and/or comparative analysis to be conducted. OFCCP will evaluate whether these factors actually explain compensation, whether they are implemented fairly and consistently applied, whether data regarding that factor is accurate, and whether they should be incorporated into the analysis to be conducted. Where a factor that explains pay differences is based on an identified employment practice, such as a specific qualification, performance review instrument, job assignment policy, or a similar policy or practice, OFCCP will evaluate it for potential disparate impact or disparate treatment before determining whether to include it in the analysis.

C. Application to Pending Compliance Evaluations

The procedures and principles described in this document apply to all OFCCP reviews scheduled on or after February 28, 2013.

The 2006 Compensation Standards and Voluntary Guidelines will govern determinations regarding the issuance of an NOV for systemic compensation discrimination in any OFCCP review scheduled, open or otherwise pending on the effective date of this Notice of Rescission. Contractors may elect to waive application of the 2006 Guidelines, and/or to have pending reviews conducted under these procedures, by notifying OFCCP in writing.

Authority: E.O. 11246, 30 FR 12319, 3 CFR, 1964–65 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–70 Comp., p. 684. E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230.

Dated: February 22, 2013.

Patricia A. Shiu,

Director, Office of Federal Contract Compliance Programs.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2012–0409]

RIN 1625–AB89

Great Lakes Pilotage Rates—2013 Annual Review and Adjustment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adjusting the rates for pilotage services on the Great Lakes, which were last amended in February 2012. The adjustments establish new base rates and are made in accordance with a full ratemaking procedure. This rulemaking promotes the Coast Guard's maritime safety mission.

DATES: This final rule is effective August 1, 2013.

ADDRESSES: Comments and material received from the public, as well as any documents mentioned in this preamble as being available in the docket, are part of docket USCG–2012–0409 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2012–0409 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Todd Haviland, Director, Great Lakes Pilotage, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

AMOU American Maritime Officers Union
APA American Pilots' Association
CFR Code of Federal Regulations
COBRA Consolidated Omnibus Budget Reconciliation Act
CPA Certified Public Accountant
CPI Consumer Price Index
E.O. Executive Order
FR Federal Register
GLPA Canadian Great Lakes Pilotage Authority
MISLE Marine Information for Safety and Law Enforcement
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
ROI Return on Investment
§ Section symbol
SPI Seaway Pilot, Inc.
U.S.C. United States Code

II. Regulatory History

On August 1, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Great Lakes Pilotage Rates—2013 Annual Review and Adjustment'' in the **Federal Register** (77 FR 45539). We received six comments on the NPRM from four sources, including the three pilots' associations and one District Three pilot. No public meeting was requested and none was held.

III. Basis and Purpose

The basis of this rulemaking is the Great Lakes Pilotage Act of 1960 (''the Act'') (46 U.S.C. Chapter 93), which requires U.S. vessels operating ''on register'' [1] and foreign vessels to use U.S. registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302(a)(1). The Act requires the Secretary of the department in which the Coast Guard is operating to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 U.S.C. 9303(f). Rates must be established or reviewed and adjusted each year, not later than March 1. Base rates must be established by a full ratemaking at least once every 5 years, and in years when base rates are not established they must be reviewed and adjusted if necessary. 46 U.S.C. 9303(f). The Secretary's duties and authority under the Act have been delegated to the Coast Guard. Department of Homeland Security Delegation No. 0170.1, paragraph (92)(f). Coast Guard regulations implementing the Act appear in parts 401 through 404 of Title 46, Code of Federal Regulations (CFR). Procedures for use in establishing base rates appear in 46 CFR part 404, Appendix A, and procedures for annual review and adjustment of existing base rates appear in 46 CFR part 404, Appendix C.

The purpose of this rulemaking is to establish new base pilotage rates, using the 46 CFR part 404, Appendix A, methodology.

IV. Background

The vessels affected by this rulemaking are engaged in foreign trade upon the U.S. waters of the Great Lakes. U.S. and Canadian ''Lakers,'' [2] which account for most commercial shipping on the Great Lakes, are not affected. 46 U.S.C. 9302.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, so long as the association is able to provide safe, efficient, and reliable pilotage service. Also, we do not control the actual compensation that pilots receive. The actual compensation is determined by each of the three district associations.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure.

[1] ''On register'' means that the vessel's certificate of documentation has been endorsed with a registry endorsement, and therefore, may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. 46 U.S.C. 12105, 46 CFR 67.17.

[2] A ''Laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes.

Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Act, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. While working in those undesignated areas, pilots must only ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' 46 U.S.C. 9302(a)(1)(B).

This rule is a full ratemaking to establish new base pilotage rates, using the 46 CFR part 404, Appendix A, methodology. The last full ratemaking established the current base rates in the 2012 final rule (77 FR 11752, February 28, 2012). Among other things, the Appendix A methodology requires us to review detailed pilot association financial information, and we contract with independent accountants to assist in that review. This final rule is based on the review of 2010 financial information. The associations are given time to review and comment on the preliminary reports of the independent accountants, before the review is finalized. Comments by the pilots' associations on those reports and the independent accountant's final findings are available in the docket.

V. Discussion of Comments and Changes

We received six public comments on our NPRM from four sources, the three pilotage associations and a District Three pilot. Two of the associations filed two comments each. The third association filed a single series of comments from the association president and the association's certified public accountant.

Agreement A. Two associations said we made mistakes regarding the American Maritime Officers Union (AMOU) contracts, Agreement A and Agreement B, which provide data used by the Appendix A methodology.

First, the associations claimed the Agreement A health benefit should be $105.61 per day, not $52.96. Second, the associations claimed the Agreement A pension benefit should be $44.61 per day, not zero. Third, the associations claimed the Agreement A daily wage rate should be $295.94, not $270.61.

Our NPRM correctly reflected the contract information that was available to us when the NPRM was published. However, as a result of these comments we reached out to AMOU to inquire if the contract that we had used was superseded. AMOU then provided us with more recent contract information. However, they now treat each individual component of wage, health, and pension benefits as proprietary information and did not consent to our request to disclose this information. Instead, they provided us with a daily aggregate rate for Agreements A and B for first mates on U.S. Great Lakes vessels, and validated our Agreements A and B aggregate rate values for designated waters. These aggregate rates combine, without separately identifying, the following inputs: Daily wage rate, vacation pay, pension plan contributions, and medical plan contributions.

In the past, those inputs were separately identified and we passed that information along to the public. For example, our August 2012 NPRM included Tables 11 (Projected Wage Components) and 12 (Projected Benefits Components). Now, because AMOU treats the separate inputs as proprietary information, the NPRM's Tables 11 and 12 must be replaced in this final rule by new Table 11 (Projected Annual Rate Components), which uses the AMOU's aggregate rates. This change in the degree of detail with which our tables display AMOU contract data does not result in any change in how those data are factored into our ratemaking methodology.

Weighting factors. Weighting factors are based on the size of a ship and are used in determining actual charges for pilotage service. All three associations pointed out that Canada now uses different weighting factors than the weighting factors used by the U.S. and shown in 46 CFR 401.400(b). Canada unilaterally changed its weighting factors in 2008 to reflect an industry shift to smaller vessels so that these smaller vessels carried a more fair portion of the costs associated with pilotage on the Great Lakes. As a result, a Canadian pilot on a ''1.0 factor'' vessel now charges 15 percent more than a U.S. pilot on the same vessel.

A similar comment was made during our 2010 ratemaking, and in the final rule for that ratemaking, 75 FR 7958 at 7959, col. 3 (Feb. 23, 2010), we declined to take action on the grounds that adjusting the weighting factors was beyond the scope of that rulemaking. Having made that determination in 2010, we cannot take action in this 2013 final rule, the public not having been afforded adequate notice in our August 1, 2012 NPRM that weighting factors might be under consideration for adjustment in the 2013 ratemaking. However, we agree with the associations that the U.S. should match the Canadian weighting factors, as a matter of parity and to reduce billing confusion between the two countries, both of which are important Federal Government concerns, as emphasized by recent Executive Order 13609, ''Promoting International Regulatory Cooperation'' (77 FR 26413, May 4, 2012). Therefore, although we will not address weighting factors in this final rule, we will do so either in the 2014 ratemaking or in a separate regulatory action.

American Pilots' Association dues. One association said we should factor into our ratemaking the dues that associations pay for membership in the American Pilots' Association (APA) because the APA ''continually collects information of value to its members [and] represents the pilotage organizations with international entities.'' We disagree. Our position has not changed from the position taken in our last two Appendix A ratemakings, completed in 2006 (71 FR 16501 at 16507, col. 3; April 3, 2006) and 2012 (77 FR 11752 at 11755, col. 2; Feb. 28, 2012). Our regulations provide clear guidance concerning this issue and state, ''[each] expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for the expense.'' 46 CFR 404.5(a)(1). Recognizable expenses must be both ''reasonable and necessary for the provision of pilotage.'' This topic is analogous to a licensure issue. Expenditures associated with obtaining and maintaining one's pilot's license represent ''necessary'' expenses that are recognized. Membership in a voluntary special interest association, like the APA, is not necessary for the provision of pilotage. We continue to find that American Pilots' Association membership dues are not necessary, and thus are excluded from the rate's operating expenses.

Bridge hour projections. Two associations commented on Coast Guard procedures for projecting bridge hours, an important part of the Appendix A ratemaking methodology, and the District Three pilot commented on the negative impact on pilot revenue of over-projecting bridge hours. One association said that, in an unexplained departure from past practice, our NPRM multiplied 2011 revenue per bridge hour by projected bridge hours to arrive at projected revenue. The other association said we consistently over-project bridge hours, resulting in over-projection of revenue. We disagree with both comments. There has been no ''unexplained departure from past practice''—we have consistently followed Step 3.A of the Appendix A methodology which states: ''Projected demand for pilotage service is

multiplied by the existing pilotage rates for that service, to arrive at the 'projection of revenue.' '' As to over-projecting bridge hours, a concern raised by the associations and the District Three pilot, we have consistently improved our ability to project demand for pilotage services. We rely on historic data, input from pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services. Both associations said we should use a ''less arbitrary'' and more accurate method to project bridge hours. This rule applies the best available information to our current methodology. However, we understand the pilots' concern about definitions and methodologies relating to bridge hours and therefore those definitions and methodologies are currently undergoing an independent, comprehensive study and review. We anticipate the study will be completed by this summer. The results of the study will inform our assessment of whether changes to the regulations are needed, and we will publish a proposed rule updating definitions and methodologies if revisions are deemed necessary.

License insurance. The District One pilots' association said we should recognize two license insurance premium costs of $26,946 and $15,781, not $23,880 and $18,847, respectively. We disagree. The association did not raise this issue during the comment period for reviewing the independent accountant's preliminary report and the commenter has provided no subsequent data in support of its claim that the costs are incorrectly allocated.

Insurance costs. The District One pilots' association said we should increase its insurance costs by $4,491 to recognize the association's addition in 2011 of a fifth pilot. The association's implication is that, under Step 1.D of the Appendix A methodology, we should adjust our projections because the fifth pilot is a ''foreseeable circumstance'' that will affect the association's costs going forward. We disagree. The audits are based on a review of the 2010 financial statements, transactions, and documents. Therefore, the addition of a fifth pilot in 2011 would not be included in a review of the 2010 financial records. This expense will be captured and evaluated in the audit of the 2011 expenses. As we stated in the previous Appendix A ratemaking, ''[we] consider significant capital expenditures and the fixed costs associated with those capital expenditures as 'foreseeable circumstances.' The rest of the expenses that fluctuate due to market forces and the variance in demand for pilot services will be reimbursed when they are recognized in the independent accountant's financial reports that we will use in future ratemaking.'' (*77 FR 11752 at 11755, col. 3*). Therefore, we will not include this expense in the 2013 Appendix A ratemaking.

Travel expenses. The District One pilots' association said our NPRM relied on an improper extrapolation in disallowing a $13,861 travel expense. We disagree. Our independent accountant determined that the expense at issue was not incurred in 2010. Only expenses incurred in that calendar year are eligible for consideration in this year's ratemaking.

Fixed assets. The District One pilots' association noted that virtually all of the association's fixed assets are owned by its ''corporate arm,'' Seaway Pilot, Inc. (SPI) and claims that we erred in our calculation of the 2012 investment base. According to the pilots, we erroneously excluded $548,369 from SPI's investment base. The pilots believe we have calculated the investment base correctly in the 2013 NPRM, but assert we have never made them whole by correcting the 2012 rate. We disagree that any corrective action is needed with respect to our 2012 calculations. As we stated in the 2012 Appendix A final rule, ''[we] coordinated with the independent accountant and used the financial information provided by District One to calculate the investment base for this rulemaking,'' and ''the independent accountant's financial reports include the investment base calculation for future rulemakings.'' (*77 FR 11752 at 11755, col. 3*). We used the information that was provided to us by the association and do not see any grounds for making the suggested adjustment. The 2013 rate, as promised, includes the investment base calculation.

Inflation. The District One pilots' association said we should adjust the 2013 rate to reflect ''a particularly egregious error'' in the 2012 rate, the exclusion of an inflationary component based on the Consumer Price Index (CPI) for the years 2007 and 2008. The association also said our inflation adjustment should reflect inflation between 2010 and 2013, and that when Appendix A was created, no one foresaw how long it would take to recognize actual past financial data in new rates. We disagree. We used the 2009 association's financial transactions to determine the allowable operating expenses for the 2012 Appendix A ratemaking. We have always calculated the inflationary portion of operating expenses in accordance with Step 1.C of the Appendix A methodology, which states: ''The inflation adjustment will be based on the preceding year's change in the Consumer Price Index for the North Central Region of the United States.'' We are currently engaged in a comprehensive study and review of the Appendix A methodology and will reevaluate how we take inflation into account. The possible need for changes in how we address inflation is within the scope of the previously-mentioned comprehensive study and review of our Great Lakes pilotage ratemaking methodology now underway.

Payroll tax methodology. The District One pilots' association said our NPRM's proposed adjustment for payroll taxes would be more appropriately based on target compensation than on actual 2010 pilot earnings. We disagree. The methodology was established to reimburse a given pilot association for its expenses that are necessary, reasonable, and directly related to providing pilotage services on the Great Lakes during the shipping season. We follow 46 CFR 404.5(a)(1), which states: ''Each expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for that expense item.'' We recognize that the payroll tax is a necessary expense, but we do not agree that we should use the value we calculate for target pilot compensation instead of the actual pilot compensation to determine the amount for payroll taxes. We consider it unreasonable to use a payroll tax amount other than the amount actually paid.

Health insurance subsidy. The District Two pilots' association said a $60,460 ''COBRA subsidy'' (referring to the Federal health subsidy under the Consolidated Omnibus Budget Reconciliation Act of 1985, or ''COBRA'') ''should not be an adjustment to projected operating expenses, because pilot health insurance premiums are not included in the projected operating expense line item.'' We disagree. The methodology was established to reimburse a given pilot association for its expenses that are necessary, reasonable, and directly related to providing pilotage services on the Great Lakes during the shipping season. If an association obtains funding from a separate source to reimburse it for an expense, the expense must be proportionately discounted for ratemaking purposes. We cannot oblige industry to reimburse an association for an expense that has already been reimbursed. This practice would be contrary to the public's interest and

inconsistent with prior determinations and rulemakings.

The District Two pilots' association also said it was given no opportunity to comment on a $99,993 COBRA expense reduction made in the 2012 final rule and that the 2013 rate should be adjusted to restore that amount. We disagree. We will not include the amount we excluded in the 2012 Appendix A ratemaking in the 2013 Appendix A ratemaking. The health insurance expense was accounted for in the 2012 Appendix A ratemaking, and thus the offset to that expense obtained by the pilots' association also needed to be accounted for. The methodology was established to reimburse a given pilots' association for its expenses that are necessary, reasonable, and directly related to providing pilotage services on the Great Lakes during a given shipping season. If an association obtains funding to reimburse it for an expense, the expense disappears for ratemaking purposes. We cannot compel industry to reimburse an association a second time for an expense that has already been reimbursed. This practice would be contrary to the public's interest and inconsistent with prior determinations and rulemakings.

VI. Discussion of the Final Rule

A. Summary

We are establishing new base pilotage rates in accordance with the methodology outlined in Appendix A to 46 CFR part 404. The new rates will be established by March 1, 2013 and will go into effect on August 1, 2013.

Based on baseline AMOU contract information that we received after publication of our August 2012 NPRM, our arithmetical calculations under Steps 1 through 6 of Appendix A would result in an average 15.89 percent rate decrease. However, as we will discuss when we explain our Step 7 adjustment of pilot rates, this year's rate adjustments will be what we proposed in the August 2012 NPRM, representing on average an approximately 1.87 percent increase over the February 2012 final rule's rate adjustments.

All figures in the tables that follow are based on calculations performed either by an independent accountant or by the Director of Great Lakes Pilotage's staff. In both cases those calculations were performed using common commercial computer programs. Decimalization and rounding of the audited and calculated data affects the display in these tables but does not affect the calculations. The calculations are based on the actual figure that rounds values for presentation in the tables.

Table 1 shows the percent change for the new rates for each area.

TABLE 1—SUMMARY OF RATE ADJUSTMENTS

If pilotage service is required in:	Then the percent change over the current rate is: (percent)
Area 1 (Designated waters)	−1.41
Area 2 (Undesignated waters)	−1.69
Area 4 (Undesignated waters)	8.87
Area 5 (Designated waters)	0.95
Area 6 (Undesignated waters)	4.31
Area 7 (Designated waters)	0.56
Area 8 (Undesignated waters)	1.52

B. Calculating the Rate Adjustment

The Appendix A methodology provides seven steps, with sub-steps, for calculating rate adjustments. The following discussion describes those steps and sub-steps and includes tables showing how we have applied them to the 2010 detailed pilot financial information.

Step 1: Projection of Operating Expenses. In this step, we project the amount of vessel traffic annually. Based upon that projection, we forecast the amount of necessary and reasonable operating expenses that pilotage rates should recover.

Step 1.A: Submission of Financial Information. This sub-step requires each pilots' association to provide us with detailed financial information in accordance with 46 CFR part 403. The associations complied with this requirement, supplying 2010 financial information in 2011; this is the most current and complete data set we have available.

Step 1.B: Determination of Recognizable Expenses. This sub-step requires us to determine which reported association expenses will be recognized for ratemaking purposes, using the guidelines shown in 46 CFR 404.5. We contracted with an independent accountant to review the reported expenses and submit findings recommending which reported expenses should be recognized. The accountant also reviewed which reported expenses should be adjusted prior to recognition, or if they should not be allowed for ratemaking purposes. The independent accountant made preliminary findings, which were sent to the pilots' associations. The pilots' associations reviewed and commented on the preliminary findings. Then, the independent accountant made final findings. The Director reviewed and accepted those final findings, resulting in the determination of recognizable expenses. The preliminary findings, the associations' comments on those findings, and the final findings are all available in the docket. Tables 2 through 4 show each association's recognized expenses.

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported expenses for 2010	Area 1	Area 2	Total
	St. Lawrence River	Lake Ontario	
Pilot Costs:			
Other pilotage costs:			
Pilot subsistence/Travel	$212,715	$167,880	$380,595
License insurance	23,880	18,847	42,727
Payroll taxes	0	0	0
Other	1,432	1,130	2,562
Total other pilotage costs	238,027	187,857	425,884
Pilot Boat and Dispatch Costs:			
Pilot boat expense	95,254	75,178	170,432
Dispatch expense	0	0	0

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE—Continued

Reported expenses for 2010	Area 1	Area 2	Total
	St. Lawrence River	Lake Ontario	
Payroll taxes	7,962	6,283	14,245
Total pilot and dispatch costs	103,216	81,461	184,677
Administrative Expenses:			
Legal	7,959	6,282	14,241
Insurance	13,971	11,026	24,997
Employee benefits	19,454	15,354	34,808
Payroll taxes	4,816	3,801	8,617
Other taxes	4,504	3,554	8,058
Travel	215	169	384
Depreciation/auto leasing/other	17,440	13,765	31,205
Interest	12,576	9,926	22,502
Dues and subscriptions	13,075	10,319	23,394
Utilities	5,130	4,049	9,179
Salaries	49,840	39,336	89,176
Accounting/Professional fees	4,997	3,943	8,940
Other	9,408	7,425	16,833
Total Administrative Expenses	163,385	128,949	292,334
Total Operating Expenses	504,628	398,267	902,895
Proposed Adjustments (independent CPA):			
Operating Expenses	.....	.....	.....
Other Pilot Costs	.....	.....	.....
Pilotage Subsistence/Travel	(7,747)	(6,114)	(13,861)
Payroll taxes	64,563	50,955	115,518
Total other pilotage costs	56,816	44,841	101,657
Administrative Expenses:			
Legal	799	631	1,430
Employee benefits	(1,537)	(1,213)	(2,750)
Dues and subscriptions	(13,075)	(10,319)	(23,394)
Total Administrative Expenses	(13,813)	(10,901)	(24,714)
Total CPA Adjustments	43,003	33,940	76,943
Total Operating Expenses	547,631	432,207	979,838

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported expenses for 2010	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Operating Expenses:			
Other pilotage costs:			
Pilot subsistence/Travel	$79,503	$119,254	$198,757
License insurance	6,168	9,252	15,420
Payroll taxes	53,457	80,186	133,643
Other	42,130	63,195	105,325
Total other pilotage costs	181,258	271,887	453,145
Pilot Boat and Dispatch Costs:			
Pilot boat expense	145,254	217,882	363,136
Dispatch expense	7,830	11,745	19,575
Payroll taxes	4,056	6,084	10,140
Total pilot and dispatch costs	157,140	235,711	392,851
Administrative Expenses:			
Legal	8,120	12,180	20,300
Office rent	26,275	39,413	65,688
Insurance	13,410	20,114	33,524

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported expenses for 2010	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Employee benefits	24,420	36,631	61,051
Payroll taxes	2,980	4,471	7,451
Other taxes	19,100	28,651	47,751
Depreciation/Auto leasing/Other	22,954	34,431	57,385
Interest	14,790	22,185	36,975
Dues and subscriptions	6,200	9,300	15,500
Utilities	12,138	18,208	30,346
Salaries	46,611	69,917	116,528
Accounting/Professional fees	14,067	21,100	35,167
Other	16,157	24,235	40,392
Total Administrative Expenses	227,223	340,835	568,058
Total Operating Expenses	565,622	848,432	1,414,054
Proposed Adjustments (independent CPA):			
Operating Expenses:			
Other Pilot Costs:			
Pilotage subsistence/Travel	(3,999)	(5,999)	(9,998)
Total other pilotage costs	(3,999)	(5,999)	(9,998)
Pilot boat and dispatch costs:			
Pilot boat expense	(767)	(1,150)	(1,917)
Total pilot boat and dispatch costs	(767)	(1,150)	(1,917)
Administrative Expenses:			
Legal	(209)	(314)	(523)
Office rent	(809)	(1,213)	(2,022)
Interest	(11,268)	(16,902)	(28,170)
Dues and subscriptions	(6,200)	(9,300)	(15,500)
Total Administrative Expenses	(18,486)	(27,729)	(46,215)
Total CPA Adjustments	(23,252)	(34,878)	(58,130)
Total Operating Expenses	542,369	813,554	1,355,924

Note: Numbers may not total due to rounding.

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported Expenses for 2010	Area 6	Area 7	Area 8	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Operating Expenses:				
Other Pilot Costs:				
Pilot subsistence/Travel	$170,162	$81,836	$108,514	$360,512
License insurance	9,204	4,426	5,869	19,499
Payroll taxes	27,774	13,358	17,712	58,844
Other	630	303	402	1,335
Total other pilotage costs	207,770	99,923	132,497	440,190
Pilot Boat and Dispatch Expenses:				
Pilot boat costs	197,244	94,861	125,785	417,890
Dispatch expense	72,550	34,891	46,266	153,707
Payroll taxes	8,068	3,880	5,145	17,093
Total pilot boat and dispatch costs	277,862	133,632	177,196	588,690
Administrative Expenses:				
Legal	28,089	13,509	17,913	59,511
Office Rent	4,673	2,247	2,980	9,900
Insurance	6,581	3,165	4,197	13,943
Employee benefits	57,942	27,866	36,950	122,758

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported Expenses for 2010	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total
Payroll taxes	5,709	2,746	3,641	12,096
Other taxes	15,381	7,397	9,808	32,586
Depreciation/auto leasing	23,495	11,299	14,983	49,777
Interest	1,537	739	980	3,256
Dues and subscriptions	13,676	6,577	8,721	28,974
Utilities	13,223	6,359	8,432	28,014
Salaries	49,802	23,951	31,759	105,512
Accounting/professional fees	11,894	5,720	7,585	25,199
Other	5,574	2,681	3,555	11,810
Total administrative expenses	237,576	114,256	151,504	503,336
Total Operating Expenses	723,208	347,811	461,197	1,532,216
Proposed Adjustments (independent CPA):				
Other Pilot Costs:				
Payroll taxes	26,213	12,606	16,716	55,535
Total other pilotage costs	26,213	12,606	16,716	55,535
Pilot Boat and Dispatch Expenses:				
Dispatch costs	(2,170)	(1,044)	(1,384)	(4,598)
Total pilot boat and dispatch costs	(2,170)	(1,044)	(1,384)	(4,598)
Administrative Expenses:				
Legal	(1,454)	(699)	(927)	(3,080)
Dues and subscriptions	(13,676)	(6,577)	(8,721)	(28,974)
Other	(1,255)	(603)	(800)	(2,658)
Total administrative expenses	(16,385)	(7,879)	(10,448)	(34,712)
Total CPA Adjustments	7,658	3,683	4,884	16,225
Total Operating Expenses	730,866	351,494	466,081	1,548,441

Note: Numbers may not total due to rounding.

Step 1.C: Adjustment for Inflation or Deflation. In this sub-step we project rates of inflation or deflation for the succeeding navigation season. Because we used 2010 financial information, the ''succeeding navigation season'' for this ratemaking is 2011. We based our inflation adjustment of 3.2 percent on the 2011 change in the CPI for the Midwest Region of the United States, which can be found at: *http://www.bls.gov/xg_shells/ro5xg01.htm.* This adjustment appears in Tables 5 through 7.

TABLE 5—INFLATION ADJUSTMENT, DISTRICT ONE

Reported Expenses for 2010		Area 1 St. Lawrence River		Area 2 Lake Ontario		Total
Total Operating Expenses		$547,631		$432,207		$979,838
2011 change in the Consumer Price Index (CPI) for the Midwest Region of the United States	×	.032	×	.032	×	.032
Inflation Adjustment	=	$17,524	=	$13,831	=	$31,355

TABLE 6—INFLATION ADJUSTMENT, DISTRICT TWO

Reported Expenses for 2010		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI		Total
Total Operating Expenses		$542,369		$813,554		$1,355,924
2011 change in the Consumer Price Index (CPI) for the Midwest Region of the United States	×	.032	×	.032	×	.032

TABLE 6—INFLATION ADJUSTMENT, DISTRICT TWO—Continued

Reported Expenses for 2010		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI		Total
Inflation Adjustment	=	$17,356	=	$26,034	=	$43,390

TABLE 7—INFLATION ADJUSTMENT, DISTRICT THREE

Reported Expenses for 2010		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior		Total
Total Operating Expenses		$730,866		$351,494		$466,081		$1,548,441
2011 change in the Consumer Price Index (CPI) for the Midwest Region of the United States	×	.032	×	.032	×	.032	×	.032
Inflation Adjustment	=	$23,388	=	$11,248	=	$14,915	=	$49,550

Step 1.D: Projection of Operating Expenses. The final sub-step of Step 1 is to project the operating expenses for each pilotage area, on the basis of the preceding sub-steps and any other foreseeable circumstances that could affect the accuracy of the projection. Based on comments and supporting material received for the 2012 Appendix A NPRM, we determined that foreseeable circumstances exist in District One.

Eight months of District One's pilot boat mortgage payments and boat insurance qualify as foreseeable circumstances. For District One, the projected operating expenses are based on the calculations from Sub-steps 1.A through 1.C and the aforementioned foreseeable circumstances. Table 8 shows these projections.

TABLE 8—PROJECTED OPERATING EXPENSES, DISTRICT ONE

Reported Expenses for 2010		Area 1 St. Lawrence River		Area 2 Lake Ontario		Total
Total operating expenses		$547,631		$432,207		$979,838
Inflation adjustment 3.2%	+	17,524	+	13,831	+	31,355
Director's adjustment & foreseeable circumstances:						
Pilot boat mortgage payments	+	26,429	+	20,815	+	47,244
Pilot boat insurance	+	7,221	+	5,687	+	12,908
Total projected expenses for 2012 pilotage season	=	$598,805	=	$472,540	=	$1,071,344

Note: Numbers may not total due to rounding.

During the audit for the 2013 Appendix A rulemaking, the independent accountant informed us that District Two applied for and received a COBRA subsidy for the first and second quarter of 2010. The American Recovery and Reinvestment Act of 2009 provided for a temporary premium subsidy for COBRA continuation coverage. The amount of the COBRA insurance subsidy for the period 2010 was $60,460. Federal taxes of $18,400 are accounted for in Step 6 (Federal Tax Allowance). For District Two, the projected operating expenses are based on the calculations from Sub-steps 1.A through 1.C, the COBRA subsidy, and Federal taxes. Table 9 shows these projections.

TABLE 9—PROJECTED OPERATING EXPENSES, DISTRICT TWO

Reported Expenses for 2010		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI		Total
Total Operating Expenses		$542,369		$813,554		$1,355,924
Inflation Adjustment 3.2%	+	17,356	+	26,034	+	43,390
Director's adjustment & foreseeable circumstances						
American Recovery and Reinvestment Act Subsidy	+	(24,184)	+	(36,276)	+	(60,460)
Federal taxes (accounted for in Step 6)	+	(7,360)	+	(11,040)	+	(18,400)
Total projected expenses for 2013 pilotage season	=	528,182	=	792,272	=	1,320,454

Because we are not now aware of any such foreseeable circumstances for District 3, its projected operating expenses are based exclusively on the calculations from Sub-steps 1.A through 1.C. Table 10 shows these projections.

TABLE 10—PROJECTED OPERATING EXPENSES, DISTRICT THREE

Reported Expenses for 2010	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total
Total expenses	$730,866	$351,494	$466,081	$1,548,441
Inflation adjustment 3.2%	+ 23,388	+ 11,248	+ 14,915	+ 49,550
Total projected expenses for 2013 pilotage season	= 754,254	= 362,742	= 480,996	= 1,597,991

Step 2: Projection of Target Pilot Compensation. In Step 2, we project the annual amount of target pilot compensation that pilotage rates should provide in each area. These projections are based on our latest information on the conditions that will prevail in 2013.

Step 2.A: Determination of Target Rate of Compensation. Target pilot compensation for pilots in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. Compensation is determined based on the most current union contracts and includes wages and benefits received by first mates. We calculate target pilot compensation for pilots on designated waters by multiplying the average first mates' wages by 150 percent and then adding the average first mates' benefits. In prior rulemakings, the AMOU shared the individual compensation components for first mates and the scheme for applying these components. We took each component and applied the scheme to determine a monthly value. We then multiplied this monthly value by 9 months, because the Great Lakes shipping season for pilotage lasts from around the end of March to around the end of December (approximately 9 months). We then created a table that combined all of the components to determine the target pilot compensation for a given year.

As we discussed in part V of this preamble, the AMOU contract changed after we published our August 2012 NPRM. The values stipulated by AMOU that we now use are aggregates. These aggregates include the daily wage rate, vacation pay, pension plan contributions, and medical plan contributions; these represent the components we previously calculated in separate tables using the scheme outlined in the contract. Using these aggregates eliminates the need to calculate each component separately and reduces the number of tables we need to demonstrate our calculations, but otherwise it does not affect how AMOU contract data is factored into our ratemaking methodology.

According to the information provided by the AMOU, new contracts will take effect August 1, 2013 and will expire July 31, 2016, and they set the following aggregate daily rates: in undesignated waters, $592.92 for Agreement A and $585.57 for Agreement B; in designated waters, $816.09 for Agreement A and $803.24 for Agreement B.

Because we are interested in annual compensation, we must convert these daily rates. In past contracts, the AMOU used monthly multipliers, and we then applied those monthly multipliers over the average 9-month length of the Great Lakes shipping season to determine annual compensation. The latest AMOU contracts no longer use monthly multipliers, but instead use a 270-day multiplier which reflects an average 30-day month, over the 9 months of the average shipping season. Table 11 shows our calculations using the 270-day multiplier.

TABLE 11—PROJECTED ANNUAL AGGREGATE RATE COMPONENTS

Aggregate Rate—Wages and Vacation, Pension, and Medical Benefits	
Pilots on Undesignated Waters	
Agreement A:	
$592.92 daily rate × 270 days	$160,088.40
Agreement B:	
$585.57 daily rate × 270 days	$158,103.90
Pilots on Designated Waters	
Agreement A:	
$816.09 daily rate × 270 days	$220,334.30
Agreement B:	
$803.24 daily rate × 270 days	$216,874.80

We apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement. Agreement A applies to vessels operated by Key Lakes, Inc., representing approximately 30 percent of tonnage, and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc., representing approximately 70 percent of tonnage. Table 12 provides details.

TABLE 12—SHIPPING TONNAGE APPORTIONED BY CONTRACT

Company	Agreement A	Agreement B
American Steamship Company		815,600
Mittal Steel USA, Inc.		38,826
Key Lakes, Inc.	361,385	
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,385 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2762%

We use the percentages from Table 12 to apportion the projected compensation from Table 11. This gives us a single tonnage-weighted set of figures. Table 13 shows our calculations.

TABLE 13—TONNAGE-WEIGHTED COMPENSATION

		Undesignated waters		Designated waters
Agreement A:				
Total wages and benefits		$160,088.40		$220,344.30
Percent tonnage	×	29.7238%	×	29.7238%
Total	=	$47,584	=	$65,495
Agreement B:				
Total wages and benefits		$158,104		$216,875
Percent tonnage	×	70.2762%	×	70.2762%
Total	=	$111,109	=	$152,411
Projected Target Rate of Compensation:				
Agreement A total weighted average wages and benefits		$47,584		$65,495
Agreement B total weighted average wages and benefits	+	$111,109	+	$152,411
Total	=	$158,694	=	$217,906

Step 2.B: Determination of the Number of Pilots Needed. Subject to adjustment by the Director to ensure uninterrupted service or for other reasonable circumstances, we determine the number of pilots needed for ratemaking purposes in each area by dividing projected bridge hours for each area, by either 1,000 (designated waters) or 1,800 (undesignated waters) bridge hours. We round the mathematical results and express our determination as whole pilots.

''Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service,'' 46 CFR part 404, Appendix A, Step 2.B(1). For that reason and as we explained most recently in the 2011 ratemaking's final rule, we do not include, and never have included, pilot delay, detention, or cancellation in calculating bridge hours. See 76 FR 6351 at 6352 col. 3; Feb. 4, 2011. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. We use historical data, input from the pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services for the coming year.

In our 2012 final rule, we determined that 38 pilots would be needed for ratemaking purposes. We have determined that 38 remains the proper number to use for ratemaking purposes in 2013. This includes five pilots in Area 2, where rounding up alone would result in only four pilots. For the same reasons we explained at length in the final rule for the 2008 ratemaking (74 FR 220 at 221–22 Jan. 5, 2009), which is available in the docket, we have determined that this adjustment is essential for ensuring uninterrupted pilotage service in Area 2. Table 14 shows the bridge hours we project will be needed for each area and our calculations to determine the number of whole pilots needed for ratemaking purposes.

TABLE 14—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2013 bridge hours		Divided by 1,000 (designated waters) or 1,800 (undesignated waters)		Calculated value of pilot demand	Pilots needed (total = 38)
Area 1 (Designated waters)	5,216	÷	1,000	=	5.216	6
Area 2 (Undesignated waters)	5,509	÷	1,800	=	3.061	5
Area 4 (Undesignated waters)	6,814	÷	1,800	=	3.785	4
Area 5 (Designated waters)	5,102	÷	1,000	=	5.102	6
Area 6 (Undesignated waters)	11,411	÷	1,800	=	6.339	7
Area 7 (Designated waters)	3,223	÷	1,000	=	3.223	4
Area 8 (Undesignated waters)	9,540	÷	1,800	=	5.300	6

Step 2.C: Projection of Target Pilot Compensation. In Table 15 we project total target pilot compensation separately for each area, by multiplying the number of pilots needed in each area, as shown in Table 14, by the target pilot compensation shown in Table 13.

TABLE 15—PROJECTION OF TARGET PILOT COMPENSATION BY AREA

Pilotage area	Pilots needed (total = 38)		Target rate of pilot compensation		Projected target pilot compensation
Area 1 (Designated waters)	6	×	$217,906	=	$1,307,436
Area 2 (Undesignated waters)	5	×	158,694	=	793,469
Area 4 (Undesignated waters)	4	×	158,694	=	634,775
Area 5 (Designated waters)	6	×	217,906	=	1,307,436
Area 6 (Undesignated waters)	7	×	158,694	=	1,110,856
Area 7 (Designated waters)	4	×	217,906	=	871,624
Area 8 (Undesignated waters)	6	×	158,694	=	952,163

Note: Numbers may not total due to rounding.

Step 3 and 3.A: Projection of Revenue. In this step, we project the revenue that would be received in 2013 if demand for pilotage services matches the bridge hours we projected in Table 14, and if 2012 pilotage rates were left unchanged. Table 16 shows this calculation.

TABLE 16—PROJECTION OF REVENUE BY AREA

Pilotage area	Projected 2013 bridge hours		2012 Pilotage rates		Revenue projection for 2013
Area 1 (Designated waters)	5,216	×	$467.58	=	$2,438,897
Area 2 (Undesignated waters)	5,509	×	289.72	=	1,596,067
Area 4 (Undesignated waters)	6,814	×	188.54	=	1,284,712
Area 5 (Designated waters)	5,102	×	504.11	=	2,571,969
Area 6 (Undesignated waters)	11,411	×	191.69	=	2,187,375
Area 7 (Designated waters)	3,223	×	480.26	=	1,547,878
Area 8 (Undesignated waters)	9,540	×	183.87	=	1,754,120
Total					13,381,018

Step 4: Calculation of Investment Base. This step calculates each association's investment base, the recognized capital investment in the assets employed by the association required to support pilotage operations. This step uses a formula set out in 46 CFR part 404, Appendix B. The first part of the formula identifies each association's total sources of funds. Tables 17 through 19 follow the formula up to that point.

TABLE 17—TOTAL SOURCES OF FUNDS, DISTRICT ONE

		Area 1		Area 2
Recognized Assets:				
Total Current Assets		$681,485		$537,847
Total Current Liabilities	–	78,005	–	61,564
Current Notes Payable	+	22,168	+	17,496
Total Property and Equipment (NET)	+	374,021	+	295,189
Land	–	12,315	–	9,720
Total Other Assets	+	0	+	0
Total Recognized Assets	=	987,354	=	779,248
Non-Recognized Assets:				
Total Investments and Special Funds	+	6,103	+	4,817
Total Non-Recognized Assets	=	6,103	=	4,817
Total Assets:				
Total Recognized Assets		987,354		779,248
Total Non-Recognized Assets	+	6,103	+	4,817
Total Assets	=	993,457	=	784,065
Recognized Sources of Funds:				
Total Stockholder Equity		659,702		520,656
Long-Term Debt	+	323,902	+	255,633
Current Notes Payable	+	22,168	+	17,496
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	1,005,772	=	793,785
Non-Recognized Sources of Funds:				
Pension Liability		0		0

TABLE 17—TOTAL SOURCES OF FUNDS, DISTRICT ONE—Continued

		Area 1		Area 2
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		1,005,772		793.785
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	1,005,772	=	793,785

TABLE 18—TOTAL SOURCES OF FUNDS, DISTRICT TWO

		Area 4		*Area 5*
Recognized Assets:				
Total Current Assets		$454,842		$1,026,731
Total Current Liabilities	–	449,157	–	1,013,899
Current Notes Payable	+	0	+	0
Total Property and Equipment (NET)	+	312,858	+	706,224
Land	–	0	–	0
Total Other Assets	+	0	+	0
Total Recognized Assets	=	318,543	=	719,056
Non-Recognized Assets:				
Total Investments and Special Funds	+	0	+	0
Total Non-Recognized Assets	=	0	=	0
Total Assets:				
Total Recognized Assets		318,543		719,056
Total Non-Recognized Assets	+	0	+	0
Total Assets	=	318,543	=	719,056
Recognized Sources of Funds:				
Total Stockholder Equity		60,920		137,517
Long-Term Debt	+	257,622	+	581,540
Current Notes Payable	+	0	+	0
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	318,542	=	719,057
Non-Recognized Sources of Funds:				
Pension Liability		0		0
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		318,542		719,057
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	318,542	=	719,057

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT THREE

		Area 6		Area 7		Area 8
Recognized Assets:						
Total Current Assets		$1,009,619		$485,558		$643,846
Total Current Liabilities	–	123,906	–	59,590	–	79,016
Current Notes Payable	+	0	+	0	+	0
Total Property and Equipment (NET)	+	35,709	+	17,174	+	22,772
Land	–	0	–	0	–	0
Total Other Assets	+	354	+	170	+	226
Total Recognized Assets	=	921,776	=	443,312	=	587,828
Non-Recognized Assets:						
Total Investments and Special Funds	+	0	+	0	+	0
Total Non-Recognized Assets	=	0	=	0	=	0

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT THREE—Continued

		Area 6		Area 7		Area 8
Total Assets:						
Total Recognized Assets		921,776		443,312		587,828
Total Non-Recognized Assets	+	0	+	0	+	0
Total Assets	=	921,776	=	443,312	=	587,828
Recognized Sources of Funds:						
Total Stockholder Equity		921,776		443,312		587,828
Long-Term Debt	+	0	+	0	+	0
Current Notes Payable	+	0	+	0	+	0
Advances from Affiliated Companies	+	0	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0	+	0
Total Recognized Sources	=	921,776	=	443,321	=	587,828
Non-Recognized Sources of Funds:						
Pension Liability		0		0		0
Other Non-Current Liabilities	+	0	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0	+	0
Other Deferred Credits	+	0	+	0	+	0
Total Non-Recognized Sources	=	0	=	0	=	0
Total Sources of Funds:						
Total Recognized Sources		921,776		443,321		587,828
Total Non-Recognized Sources	+	0	+	0	+	0
Total Sources of Funds	=	921,776	=	443,321	=	587,828

Tables 17 through 19 also relate to the second part of the formula for calculating the investment base. The second part establishes a ratio between recognized sources of funds and total sources of funds. Since no non-recognized sources of funds (sources we do not recognize as required to support pilotage operations) exist for any of the pilots' associations for this year's rulemaking, the ratio between recognized sources of funds and total sources of funds is ''1:1'' (or a multiplier of ''1'') in all cases. Table 20 applies the multiplier of ''1,'' and shows that the investment base for each association equals its total recognized assets. Table 20 also expresses these results by area, because area results will be needed in subsequent steps.

TABLE 20—INVESTMENT BASE BY AREA AND DISTRICT

District	Area	Total recognized assets ($)	Recognized sources of funds ($)	Total sources of funds ($)	Multiplier (ratio of recognized to total sources)	Investment base ($) [1]
One	1	987,354	1,005,772	1,005,772	1	987,354
	2	779,248	793,785	793,785	1	779,248
					TOTAL	1,766,602
Two [2]	4	318,543	318,542	318,542	1	318,543
	5	719,056	719,057	719,057	1	719,056
					TOTAL	1,037,599
Three	6	921,776	921,776	921,776	1	921,776
	7	443,312	443,312	443,312	1	443,312
	8	587,828	587,828	587,828	1	587,828
					TOTAL	1,952,916

[1] **Note:** ''Investment base'' = ''Total recognized assets'' × ''Multiplier (ratio of recognized to total sources)''.
[2] **Note:** The pilots' associations that provide pilotage services in Districts One and Three operate as partnerships. The pilots' association that provides pilotage service for District Two operates as a corporation.

Step 5: Determination of Target Rate of Return. We determine a market-equivalent return on investment (ROI) that will be allowed for the recognized net capital invested in each association by its members. We do not recognize capital that is unnecessary or unreasonable for providing pilotage services. There are no non-recognized investments in this year's calculations. The allowed ROI is based on the preceding year's average annual rate of return for new issues of high-grade corporate securities. For 2011, the preceding year, the allowed ROI was a little more than 4.64 percent, based on the average rate of return that year on Moody's AAA corporate bonds, which can be found at: *http://research.stlouisfed.org/fred2/series/AAA/downloaddata?cid=119.*

Step 6: Adjustment Determination. The first sub-step in the adjustment determination requires an initial calculation, applying a formula described in Appendix A. The formula uses the results from Steps 1, 2, 3, and 4 to project the ROI that can be expected in each area, if no further adjustments are made. This calculation is shown in Tables 21 through 23.

TABLE 21—PROJECTED ROI, AREAS IN DISTRICT ONE

		Area 1		Area 2
Revenue (from Step 3)	+	$2,438,897	+	$1,596,067
Operating Expenses (from Step 1)	–	598,805	–	472,540
Pilot Compensation (from Step 2)	–	1,307,436	–	793,469
Operating Profit/(Loss)	=	532,656	=	330,059
Interest Expense (from audits)	–	12,576	–	9,926
Earnings Before Tax	=	520,080	=	320,133
Federal Tax Allowance	–	0	–	0
Net Income	=	520,080	=	320,133
Return Element (Net Income + Interest)		532,656		330,059
Investment Base (from Step 4)	÷	987,354	÷	779,248
Projected Return on Investment	=	0.54	=	0.42

Note: Numbers may not total due to rounding.

TABLE 22—PROJECTED ROI, AREAS IN DISTRICT TWO

		Area 4		Area 5
Revenue (from Step 3)	+	$1,284,712	+	$2,571,969
Operating Expenses (from Step 1)	–	528,181	–	792,272
Pilot Compensation (from Step 2)	–	634,775	–	1,307,436
Operating Profit/(Loss)	=	121,756	=	472,261
Interest Expense (from audits)	–	3,522	–	5,283
Earnings Before Tax	=	118,234	=	466,978
Federal Tax Allowance	–	0	–	0
Net Income	=	118,234	=	466,978
Return Element (Net Income + Interest)		121,756		472,261
Investment Base (from Step 4)	÷	318,543	÷	719,056
Projected Return on Investment	=	0.38	=	0.66

Note: Numbers may not total due to rounding.

TABLE 23—PROJECTED ROI, AREAS IN DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue (from Step 3)	+	$2,187,375	+	$1,547,878	+	$1,754,120
Operating Expenses (from Step 1)	–	754,254	–	362,742	–	480,996
Pilot Compensation (from Step 2)	–	1,110,856	–	871,624	–	952,163
Operating Profit/(Loss)	=	322,264	=	313,512	=	320,962
Interest Expense (from audits)	–	1,537	–	739	–	980
Earnings Before Tax	=	320,727	=	312,773	=	319,982
Federal Tax Allowance	–	0	–	0	–	0
Net Income	=	320,727	=	312,773	=	319,982
Return Element (Net Income + Interest)		322,264		313,512		320,962
Investment Base (from Step 4)	÷	921,776	÷	443,312	÷	587,828
Projected Return on Investment	=	0.35	=	0.71	=	0.55

Note: Numbers may not total due to rounding.

The second sub-step required for Step 6 compares the results of Tables 21 through 23 with the target ROI (approximately 4.64 percent) we obtained in Step 5 to determine if an adjustment to the base pilotage rate is necessary. Table 24 shows this comparison for each area.

TABLE 24—COMPARISON OF PROJECTED ROI AND TARGET ROI, BY AREA [1]

	Area 1	Area 2	Area 4	Area 5	Area 6	Area 7	Area 8
	St. Lawrence River	Lake Ontario	Lake Erie	Southeast Shoal to Port Huron, MI	Lakes Huron and Michigan	St. Mary's River	Lake Superior
Projected return on investment	0.539	0.424	0.382	0.657	0.350	0.707	0.546

TABLE 24—COMPARISON OF PROJECTED ROI AND TARGET ROI, BY AREA [1]—Continued

	Area 1	Area 2	Area 4	Area 5	Area 6	Area 7	Area 8
	St. Lawrence River	Lake Ontario	Lake Erie	Southeast Shoal to Port Huron, MI	Lakes Huron and Michigan	St. Mary's River	Lake Superior
Target return on investment	0.046	0.046	0.046	0.046	0.046	0.046	0.046
Difference in return on investment	0.493	0.377	0.336	0.610	0.303	0.661	0.500

[1] **Note:** Decimalization and rounding of the target ROI affects the display in this table but does not affect our calculations, which are based on the actual figure.

Because Table 24 shows a significant difference between the projected and target ROIs, an adjustment to the base pilotage rates is necessary. Step 6 now requires us to determine the pilotage revenues that are needed to make the target return on investment equal to the projected return on investment. This calculation is shown in Table 25. It adjusts the investment base we used in Step 4, multiplying it by the target ROI from Step 5, and applies the result to the operating expenses and target pilot compensation determined in Steps 1 and 2.

TABLE 25—REVENUE NEEDED TO RECOVER TARGET ROI, BY AREA

Pilotage area	Operating Expenses (Step 1)		Target Pilot Compensation (Step 2)		Investment Base (Step 4) × 4.64 (Target ROI Step 5)		Federal Tax Allowance		Revenue Needed
Area 1 (Designated waters)	$598,805	+	$1,307,436	+	$45,813	+	$0	=	$1,952,054
Area 2 (Undesignated waters)	472,540	+	793,469	+	36,157	+	0	=	1,302,166
Area 4 (Undesignated waters)	528,181	+	634,775	+	14,780	+	7,360	=	1,185,096
Area 5 (Designated waters)	792,272	+	1,307,436	+	33,364	+	11,040	=	2,144,112
Area 6 (Undesignated waters)	754,254	+	1,110,856	+	42,770	+	0	=	1,907,881
Area 7 (Designated waters)	362,742	+	871,624	+	20,570	+	0	=	1,254,936
Area 8 (Undesignated waters)	480,996	+	952,163	+	27,275	+	0	=	1,460,433
Total	3,989,788	+	6,977,760	+	220,730	+	18,400	=	11,206,678

The ''Revenue Needed'' column of Table 25 is less than the revenue we projected in Table 16. For purposes of transparency, we verify Table 25's calculations by rerunning the first part of Step 6, using the revenue needed from Table 25 instead of the Table 16 revenue projections we used in Tables 21 through 23. Tables 26 through 28 show that attaining the Table 25 revenue needed is sufficient to recover target ROI.

TABLE 26—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT ONE

		Area 1		Area 2
Revenue Needed	+	$1,952,054	+	$1,302,166
Operating Expenses (from Step 1)	–	598,805	–	472,540
Pilot Compensation (from Step 2)	–	1,307,436	–	793,469
Operating Profit/(Loss)	=	45,813	=	36,157
Interest Expense (from audits)	–	12,576	–	9,926
Earnings Before Tax	=	33,237	=	26,231
Federal Tax Allowance	–	0	–	0
Net Income	=	33,237	=	26,231
Return Element (Net Income + Interest)		45,813		36,157
Investment Base (from Step 4)	÷	987,354	÷	779,248
Return on Investment	=	0.0464	=	0.0464

TABLE 27—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT TWO

		Area 4		Area 5
Revenue Needed	+	$1,185,096	+	$2,144,112
Operating Expenses (from Step 1)	–	528,181	–	792,272
Pilot Compensation (from Step 2)	–	634,775	–	1,307,436
Operating Profit/(Loss)	=	22,140	=	44,404
Interest Expense (from audits)	–	3,522	–	5,283
Earnings Before Tax	=	18,616	=	39,115
Federal Tax Allowance	–	7,360	–	11,040
Net Income	=	11,258	=	28,081
Return Element (Net Income + Interest)		14,780		33,364
Investment Base (from Step 4)	÷	318,543	÷	719,056

TABLE 27—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT TWO—Continued

		Area 4		Area 5
Return on Investment	=	0.0464	=	0.0464

TABLE 28—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue Needed	+	$1,907,881	+	$1,254,936	+	$1,460,433
Operating Expenses (from Step 1)	–	754,254	–	362,742	–	480,996
Pilot Compensation (from Step 2)	–	1,110,856	–	871,624	–	952,163
Operating Profit/(Loss)	=	42,770	=	20,570	=	27,275
Interest Expense (from audits)	–	1,537	–	739	–	980
Earnings Before Tax	=	41,233	=	19,831	=	26,295
Federal Tax Allowance	–	0	–	0	–	0
Net Income	=	41,233	=	19,831	=	26,295
Return Element (Net Income + Interest)		42,770		20,570		27,275
Investment Base (from Step 4)	÷	921,776	÷	443,312	÷	587,828
Return on Investment	=	0.0464	=	0.0464	=	0.0464

Step 7: Adjustment of Pilotage Rates. This step calls for us to divide the Step 6 revenue needed (Table 25) by the Step 3 revenue projection (Table 16), to give us a rate multiplier for each area. Tables 29 through 31 show these calculations.

TABLE 29—RATE MULTIPLIER, AREAS IN DISTRICT ONE

Ratemaking projections		Area 1 St. Lawrence River		Area 2 Lake Ontario
Revenue Needed (from Step 6)		$1,952,046		$1,302,159
Revenue (from Step 3)	÷	2,438,897	÷	1,596,067
Rate Multiplier	=	0.8004	=	0.8159

TABLE 30—RATE MULTIPLIER, AREAS IN DISTRICT TWO

Ratemaking projections		Area 4 Lake Erie		Area 5 South-east Shoal to Port Huron, MI
Revenue Needed (from Step 6)		$1,185,094		$2,144,106
Revenue (from Step 3)	÷	1,284,712	÷	2,571,969
Rate Multiplier	=	0.9225	=	0.8336

TABLE 31—RATE MULTIPLIER, AREAS IN DISTRICT THREE

Ratemaking projections		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior
Revenue Needed (from Step 6)		$1,907,873		$1,254,932		$1,460,429
Revenue (from Step 3)	÷	2,187,375	÷	1,547,878	÷	1,754,120
Rate Multiplier	=	0.8722	=	0.8107	=	0.8326

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420) and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), would decrease by 16.25 percent in all areas.

We then calculate a rate multiplier for adjusting the basic rates and charges described in 46 CFR 401.420 and 401.428 and applicable in all areas. We divide total revenue needed (Step 6, Table 25) by total projected revenue (Step 3 & 3A, Table 16). Table 32 shows this calculation.

TABLE 32—RATE MULTIPLIER FOR BASIC RATES AND CHARGES IN 46 CFR 401.420 AND 401.428

Ratemaking projections		
Total Revenue Needed (from Step 6)		$11,206,638.64
Total revenue (from Step 3)	÷	$13,381,017.91

TABLE 32—RATE MULTIPLIER FOR BASIC RATES AND CHARGES IN 46 CFR 401.420 AND 401.428—Continued

Ratemaking projections		
Rate Multiplier	=	0.838

Without further action, the existing rates we established in our 2012 final rule would then be multiplied by the rate multipliers from Tables 29 through 31 to calculate the area by area rate changes for 2013. The resulting 2013 rates, on average, would then be decreased almost 16 percent from the 2012 rates, instead of increasing almost 2 percent as we proposed in our August 2012 NPRM. We decline to impose that decrease; but instead, we are relying on the discretionary authority we have under Step 7 to further adjust rates. Table 33 compares the impact, area by area, that an average decrease of almost 16 percent would have, relative to the impact each area will actually experience as a result of this final rule.

TABLE 33—IMPACT OF EXERCISING STEP 7 DISCRETION

Area	Percent change without exercising Step 7 discretion	Percent change with exercise of Step 7 discretion
Area 1 (Designated waters)	−19.96	−1.41
Area 2 (Undesignated waters)	−18.41	−1.69
Area 4 (Undesignated waters)	−7.75	8.87
Area 5 (Designated waters)	−16.64	0.95
Area 6 (Undesignated waters)	−12.78	4.31
Area 7 (Designated waters)	−18.93	0.56
Area 8 (Undesignated waters)	−16.74	1.52

Our discretionary authority under Step 7 must be ''based on requirements of the Memorandum of Arrangements between the United States and Canada, and other supportable circumstances that may be appropriate.'' The Memorandum of Arrangements calls for comparable U.S. and Canadian rates, and the rates would not be comparable if U.S. rates decrease by 16 percent, while Canadian rates for 2013 increase by 2.5 percent.[3] ''Other supportable circumstances'' we have for exercising our discretion include recent Executive Order 13609, which calls on Federal agencies to eliminate ''unnecessary differences'' between U.S. and foreign regulations (77 FR 26413, sec. 1), and the possibility that a 16 percent rate decrease would jeopardize the ability of the three pilotage associations to provide safe, dependable service. (In the case of one association, our examination of that association's financial data suggests it could not survive such a rate decrease.)

The following tables reflect the rate adjustments we proposed in our August 2012 NPRM. We are finalizing the values from the NPRM in this rulemaking.

Tables 34 through 36 show these calculations.

TABLE 34—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT ONE

	2012 Rate		Rate multiplier (2013 APP A NPRM)		Adjusted rate for 2013
Area 1					
St. Lawrence River:					
Basic Pilotage	$19.02/km, $33.67/mi	×	0.986	=	$18.75/km, $33.19/mi
Each lock transited	$422	×	0.986	=	$416
Harbor movage	$1,381	×	0.986	=	$1,361
Minimum basic rate, St. Lawrence River	$921	×	0.986	=	$908
Maximum rate, through trip	$4,041	×	0.986	=	$3,984
Area 2					
Lake Ontario:					
6-Hour period	$865	×	0.983	=	$851
Docking or Undocking	$826	×	0.983	=	$812

Note: Numbers may not total due to rounding.

[3] The Canadian Great Lakes Pilotage Authority (GLPA) originally recommended a 2013 rate increase of 4 percent based on GLPA's analysis of the revenue needed to cover the costs of providing pilotage service for GLPA clients, but reduced that figure to 2.5 percent based in large part on our NPRM's proposed average 1.87 percent increase.

TABLE 35—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO

	2012 Rate		Rate multiplier (2013 APP A NPRM)		Adjusted rate for 2013
Area 4					
Lake Erie:					
6-Hour period	$760	×	1.089	=	$828
Docking or undocking	$585	×	1.089	=	$637
Any point on Niagara River below Black Rock Lock	$1,493	×	1.089	=	$1,626
Area 5					
Southeast Shoal to Port Huron, MI between any point on or in:					
Toledo or any point on Lake Erie W. of Southeast Shoal	$1,369	×	1.010	=	$1,382
Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal	$2,317	×	1.010	=	$2,339
Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River	$3,008	×	1.010	=	$3,037
Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat	$2,317	×	1.010	=	$2,339
Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	$4,036	×	1.010	=	$4,074
Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	$4,675	×	1.010	=	$4,719
Port Huron Change Point & Detroit River	$3,031	×	1.010	=	$3,060
Port Huron Change Point & Detroit Pilot Boat	$2,358	×	1.010	=	$2,381
Port Huron Change Point & St. Clair River	$1,677	×	1.010	=	$1,693
St. Clair River	$1,369	×	1.010	=	$1,382
St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	$4,036	×	1.010	=	$4,074
St. Clair River & Detroit River/Detroit Pilot Boat	$3,031	×	1.010	=	$3,060
Detroit, Windsor, or Detroit River	$1,369	×	1.010	=	$1,382
Detroit, Windsor, or Detroit River & Southeast Shoal	$2,317	×	1.010	=	$2,339
Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal	$3,008	×	1.010	=	$3,037
Detroit, Windsor, or Detroit River & St. Clair River	$3,031	×	1.010	=	$3,060
Detroit Pilot Boat & Southeast Shoal	$1,677	×	1.010	=	$1,693
Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal	$2,317	×	1.010	=	$2,339
Detroit Pilot Boat & St. Clair River	$3,031	×	1.010	=	$3,060

Note: Numbers may not total due to rounding.

TABLE 36—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT THREE

	2012 Rate		Rate multiplier (2013 APP A NPRM)		Adjusted rate for 2013
Area 6 Lakes Huron and Michigan:					
6-Hour Period	$662	×	1.043	=	$691
Docking or undocking	$629	×	1.043	=	$656
Area 7 St. Mary's River between any point on or in:					
Gros Cap & De Tour	$2,568	×	1.006	=	$2,583
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	$2,568	×	1.006	=	$2,583
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap	$967	×	1.006	=	$973
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	$2,153	×	1.006	=	$2,165
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	$967	×	1.006	=	$973
Sault Ste. Marie, MI & De Tour	$2,153	×	1.006	=	$2,165
Sault Ste. Marie, MI & Gros Cap	$967	×	1.006	=	$973
Harbor movage	$967	×	1.006	=	$973
Area 8 Lake Superior:					
6-Hour period	$577	×	1.015	=	$586
Docking or undocking	$549	×	1.015	=	$557

Note: Numbers may not total due to rounding.

VII. 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 or executive orders.

A. Regulatory Planning and Review

Executive Orders (E.O.) 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, the final rule has not been reviewed by the Office of Management and Budget (OMB). Step 7 allows for discretion when making the rate. The Memorandum of Arrangements between the United States and Canada calls for comparable rates. As such, we maintain the rate increase presented in the NPRM, resulting in an estimated cost to shippers of $148,000.

A regulatory assessment follows.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See sections III and IV of this preamble for detailed discussions of the Coast Guard's legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review of this rule, we are adjusting the pilotage rates for the 2013 shipping season to generate sufficient revenue to cover allowable expenses, and target pilot compensation and returns on investment. The rate adjustments in this final rule will lead to a cost in all three districts with an estimated cost to shippers of approximately $148,000 across all three districts.

This rule increases Great Lakes pilotage rates, on average, approximately 1.87 percent overall from the current rates set in the 2012 final rule. This represents the same increase as proposed in the NPRM. The Appendix A methodology is discussed and applied in detail in section V of this preamble. Among other factors described in section V, it reflects audited 2010 financial data from the pilots' associations (the most recent year available for auditing), projected association expenses, and regional inflation or deflation. The last full Appendix A ratemaking was concluded in 2011 and used financial data from the 2009 base accounting year. The last annual rate review, conducted under 46 CFR part 404, Appendix C, was completed early in 2011.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease will result in a cost reduction or savings for shippers in that area. The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The Coast Guard's interpretation is that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this rule, such as recreational boats and vessels only operating within the Great Lakes system may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate and is not a part of our estimated national cost to shippers. Coast Guard sampling of pilot data suggests there are very few U.S. domestic vessels, without registry and operating only in the Great Lakes that voluntarily purchase pilotage services.

We used 2008–2010 vessel arrival data from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment to be 204 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 204 vessels, there were approximately 319 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2008–2010 vessel data from MISLE.

Historically, the impact of the rate adjustment to shippers is estimated from the District pilotage revenues. These revenues represent the direct and indirect costs that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage. For this rule, we base our rate on pilotage revenues as reported for the NPRM, as discussed in step 7, despite new data provided by AMOU.

We estimate the additional impact (costs or savings) of the rate adjustment in this rule to be the difference between the total projected revenue needed to cover costs in 2013 based on the 2012 rate adjustment and the total projected revenue needed to cover costs in 2013 as set forth in the NPRM. Table 37 details additional costs or savings by area and district.

TABLE 37—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE RULE BY AREA AND DISTRICT ($U.S.; NON-DISCOUNTED)

	Projected revenue needed in 2012*	Projected revenue needed in 2013**	Additional costs or savings of this rule
Area 1	$2,308,357	$2,404,424	$96,067
Area 2	1,614,791	1,569,160	(45,631)
Total, District One	3,923,148	3,973,583	50,435
Area 4	1,310,549	1,398,694	88,145
Area 5	2,600,490	2,596,484	(4,006)
Total, District Two	3,911,039	3,995,178	84,139
Area 6	2,227,555	2,281,673	54,118
Area 7	1,565,906	1,556,517	(9,389)
Area 8	1,811,863	1,780,829	(31,034)
Total, District Three	5,605,324	5,619,020	13,696

*These 2012 estimates are detailed in Table 18 of the 2012 final rule (76 FR 6351).

**These 2013 estimates are detailed in Table 27 of the NPRM for this rulemaking.

Some values may not total due to rounding.

''Additional Revenue or Cost of this Rulemaking'' = ''Revenue needed in 2012'' minus ''Revenue needed in 2011.''

After applying the rate change in this rule, the resulting difference between the projected revenue in 2012 and the projected revenue in 2013 is the annual impact to shippers from this rule. This figure would be equivalent to the total additional payments or savings that shippers would incur for pilotage services from this rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this rule to shippers varies by area and district. The rate adjustments lead to a cost in all three districts, with affected shippers operating in District One, District Two, and District Three experiencing costs of $50,435, $84,139, and $13,696, respectively. To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators would pay more and some would pay less depending on the distance and port arrivals of their vessels' trips. As Table 37 indicates, shippers operating in all Districts would experience an increased annual cost due to this rule. The overall impact of the rule would be a cost to shippers of approximately $148,000 across all three districts.

This rule allows the U.S. Coast Guard to meet the statutory requirements to review the rates for pilotage services on the Great Lakes—ensuring proper pilot compensation.

Alternatively, if we were to impose the new rates based on the new contract data from AMOU, there would be a nearly 16 percent decrease in rates across the system. This would have a dramatically different effect on industry, moving from a proposed cost to shippers of approximately $148,000 to a cost savings of approximately $1.7 million. Table 38 shows the difference in projected 2012 expenses as compared to projected 2013 expenses based on the new AMOU contract information.

TABLE 38—ALTERNATIVE RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE RULE BY AREA AND DISTRICT ($U.S.; NON-DISCOUNTED)

	Total projected expenses in 2012	Proposed rate change	Total projected expenses in 2013	Additional revenue or cost of this rulemaking
Area 1	$2,308,357	0.9465	$2,438,897	$130,540
Area 2	1,614,791	1.0117	1,596,067	(18,724)
Total, District One	3,923,148	1.6086	2,438,897	(1,484,251)
Area 4	1,310,549	1.0201	1,284,712	(25,837)
Area 5	2,600,490	1.0111	2,571,969	(28,521)
Total, District Two	3,911,039	1.0141	3,856,681	(54,358)
Area 6	2,227,555	1.0184	2,187,375	(40,180)
Area 7	1,565,906	1.0116	1,547,878	(18,028)
Area 8	1,811,863	1.0329	1,754,120	(57,743)
Total, District Three	5,605,324	1.0211	5,489,373	(115,951)
All Three Districts	13,439,511	1.1404	11,784,951	(1,654,560)

We reject this alternative for the reasons laid out in our discussion of Step 7 in part VI of this preamble.

B. Small Entities

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

We expect entities affected by this rule will be classified under the North American Industry Classification System (NAICS) code subsector 483—Water Transportation, which includes the following 6-digit NAICS codes for freight transportation: 483111—Deep Sea Freight Transportation, 483113—Coastal and Great Lakes Freight Transportation, and 483211—Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the rule, we reviewed recent company size and ownership data from 2008–2010 Coast Guard MISLE data and business revenue and size data provided by publicly available sources such as MANTA and Reference USA. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants would be comparable in ownership and size to these shippers.

There are three U.S. entities affected by this rule that receive revenue from pilotage services. These are the three pilots' associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are designated the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees; they have approximately 65 total employees combined. We expect no adverse impact to these entities from this rule because all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots. Additionally, while we are not required to conduct a full Regulatory Flexibility Analysis for this action, we have indicated some potential adverse impacts from alternative action in our discussion of the analysis performed under Step 7.

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

C. Assistance for Small Entities

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

organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Todd Haviland, Director, Great Lake Pilotage, Office of Great Lakes Pilotage, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. 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.

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).

D. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of state law as outlined in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Additionally, President Barack Obama's memorandum of May 20, 2009, titled ''Preemption,'' states that ''preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' To that end, when a department or agency intends to preempt State law, it should do so only if justified under legal principles governing preemption, including those outlined in Executive Order 13132, and it should also include preemption provisions in the codified regulation. As currently stated in 46 CFR 401.120, states, municipalities, and other local authorities are prohibited from requiring ''the use of pilots or [regulating] any aspect of pilotage in any of the waters specified in the Act.'' Therefore, this regulation complies with the requirements of the memorandum.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

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

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$18.75 per kilometer or $33.19 per mile [1]
Each Lock Transited	$416 [1]
Harbor Movage	1,361 [1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $908, and the maximum basic rate for a through trip is $3,984.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
6-Hour Period	$851
Docking or Undocking	812

■ 3. In § 401.407 revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
6-Hour Period	$828	$828
Docking or Undocking	637	637
Any point on the Niagara River below the Black Rock Lock	N/A	1,626

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,339	$1,382	$3,037	$2,339	N/A
Port Huron Change Point	[1] 4,074	[1] 4,719	3,060	2,381	1,693
St. Clair River	[1] 4,074	N/A	3,060	3,060	1,382
Detroit or Windsor or the Detroit River	2,339	3,037	1,382	N/A	3,060
Detroit Pilot Boat	1,693	2,339	N/A	N/A	3,060

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior; and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
6-Hour Period	$691
Docking or Undocking	656

(b) Area 7 (Designated Waters):

Area	De Tour	Gros cap	Any harbor
Gros Cap	$2,583	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	2,583	$973	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,165	973	N/A
Sault Ste. Marie, MI	2,165	973	N/A
Harbor Movage	N/A	N/A	$973

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
6-Hour Period	$586
Docking or Undocking	557

§ 401.420 [Amended]

■ 5. Amend § 401.420 as follows:

■ a. In paragraph (a), remove the text ''$124'' and add, in its place, the text ''$126''; and remove the text ''$1,942'' and add, in its place, the text ''$1,972'';

■ b. In paragraph (b), remove the text ''$124'' and add, in its place, the text ''$126''; and remove the text ''$1,942'' and add, in its place, the text ''$1,972''; and

■ c. In paragraph (c)(1), remove the text ''$733'' and add, in its place, the text ''$744''; and in paragraph (c)(3), remove the text ''$124'' and add, in its place, the text ''$126'', and remove the text ''$1,942'' and add, in its place, the text ''$1,972''.

§ 401.428 [Amended]

■ 6. In § 401.428, remove the text ''$748'' and add, in its place, the text ''$744''.

Dated: February 20, 2013.

Dana A. Goward,

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

[FR Doc. 2013–04321 Filed 2–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 204, 215, 225, 227, 242, 245, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. Corrects address of the Director, DAR Council at 201.201–1(d)(i);

2. Corrects 204.203(b) for consistency with FAR terminology;

3. Corrects terminology at 204.7106(b)(2)(ii)(D) relating to contract line items;

4. Corrects text at 215.403–1(c)(1)(A)(*1*);

5. Updates DFARS text at 215.404–71–2(e)(l)(i) by adding the word ''data'' for consistency with the FAR;

6. Corrects typographical error at 215.408(2);

7. Removes obsolete language from 225.7006–3(b) and 225.7008(b).

8. Corrects typographical error at 227.7103–3(c);

9. Revises 242.302(a)(S–72);

10. Revises 242.7302 to call attention to guidance at PGI ;

11. Corrects typographical error at 245.103–72;

12. Corrects clause date and link at 252.204–7004;

13. Corrects links at 252.211–7007(a), 252.211–7007(d)(6), and 252.211–7007(g)(1);

14. Corrects clause dates at 252.212–7001(b)(2), 252.212–7001(b)(4), and at 252.212–7001(b)(26); and

15. Corrects typographical error at 252.215–7000 and clarifies clause terminology relating to Subcontractor Certified Cost or Pricing Data.

List of Subjects in 48 CFR Parts 201, 204, 215, 225, 227, 242, 245 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 204, 215, 225, 227, 242, 245 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 204, 215, 225, 227, 242, 245 and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.201–1 [Amended]

■ 2. Section 201.201–1 paragraph (d)(i) introductory text is amended by removing ''OUSD(AT&L), 3062 Defense Pentagon, Washington, DC 20301–3062;'' and adding ''OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060;'' in its place.

PART 204—ADMINISTRATIVE MATTERS

204.203 [Amended]

■ 3. Section 204.203 is amended in paragraph (b) by removing the word ''clause'' and adding the word ''provision'' in its place.

204.7106 [Amended]

■ 4. Section 204.7106 is amended in paragraph (b)(2)(ii)(D) by removing ''original contract or exhibit line or subline item'' and adding ''original contract line item or subline item or exhibit line item'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.403–1 [Amended]

■ 5. Section 215.403–1 is amended in paragraph (c)(1)(A)(*1*) by removing the word ''information'' and adding the word ''data'' in its place.

215.404–71–2 [Amended]

■ 6. Section 215.404–71–2 is amended in paragraph (e)(1)(i) by removing ''contracting office information and reviews'' and adding ''contracting office data, information and reviews'' in its place.

215.408 [Amended]

■ 7. Section 215.408 is amended in paragraph (2) by removing the word ''award'' and adding the word ''awarded'' in its place.

PART 225–FOREIGN ACQUISITION

■ 8. Section 225.7006–3(b) is revised to read as follows:

225.7006–3 Waiver.

* * * * *

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction for air circuit breakers manufactured in the United Kingdom. (See 225.7008.)

■ 9. Section 225–7008(b) is revised to read as follows:

225.7008 Waiver of restrictions of 10 U.S.C. 2534.

* * * * *

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the USD(AT&L) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels (see 225.7006).

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7103–3 [Amended]

■ 10. Section 227.7103–3 is amended in paragraph (c) by removing ''the clause at 252.277–7013'' and adding ''the clause at 252.227–7013'' in its place.

PART 242—CONTRACTOR INSURANCE/PENSION REVIEW

■ 11. Section 242.302 paragraph (a)(S–72) is revised to read as follows:

242.302 Contract administration functions.

(a) * * *

(S–72) Ensure implementation of the Synchronized Predeployment and Operational Tracker (SPOT) by the contractor and maintain surveillance over contractor compliance with SPOT business rules available at the Web site provided at PGI 225.7402–5(a)(iv) for contracts incorporating the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States. See PGI 242.302(a)(S–72) for guidance on assessing contractor's implementation of SPOT.

* * * * *

■ 12. Section 242.7302 is revised to read as follows:

242.7302 Requirements.

(a)(1) An in-depth CIPR as described at DFARS 242.7301(a)(1) shall be conducted only when—

(i) A contractor has $50 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(2) Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR that concentrates on specific areas of a contractor's insurance programs, pension plans, or other deferred compensation plans shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information or data reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor's insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

PART 245—GOVERNMENT PROPERTY

245.103–72 [Amended]

■ 13. Section 245.103–72 is amended by removing ''PGI 245–103–72'' and adding ''PGI 245.103–72'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Amended]

■ 14. Section 252.204–7004 is amended—

■ (a) By removing the clause date ''(SEP 2007)'' and adding ''(FEB 2013)'' in its place;

■ (b) In the introductory text by removing ''As prescribed in 204.1104'' and adding ''As prescribed in 204.1105'' in its place, and removing the word ''clause'' and adding the word ''provision'' in its place.

252.211–7007 [Amended]

■ 15. Section 252.211–7007 is amended as follows:

■ a. In paragraph (a), in the definition of ''supply condition code'' by removing the link ''*http://www.dtic.mil/whs/directives/corres/pdf/400025m.pdf*'' and adding the link ''*http://www2.dla.mil/j-6/dlmso/elibrary/manuals/dlm/dlm_pubs.asp*'' in its place;

■ b. In paragraph (d)(6) by removing the link ''*http://www.dtic.mil/whs/directives/corres/pdf/400025m.pdf*'' and adding the link ''*http://www2.dla.mil/j-6/dlmso/elibrary/manuals/dlm/dlm_pubs.asp*'' in its place; and

■ c. In paragraph (g)(1) by removing the link ''https:///bpn.gov/iuid'' and adding the link ''*https://iuid.logisticsinformationservice.dla.mil/*'' in its place.

252.212–7001 [Amended]

■ 16. Section 252.212–7001 is amended—

■ a. In paragraph (b)(2) by removing the clause date ''(APR 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (b)(4) by removing the clause date ''(JUN 2012)'' and adding ''(AUG 2012)'' in its place; and

■ c. In paragraph (b)(26) by removing the clause date ''(MAR 1998)'' and adding ''(DEC 2012)'' in its place.

252.215–7000 [Amended]

■ 17. Section 252.215–7000 is amended—

■ a. In the introductory paragraph by removing ''use the followiclause'' and adding ''use the following clause'' in its place, and

■ b. By removing ''Subcontractor Cost or Pricing Data'' and adding ''Subcontractor Certified Cost or Pricing Data'' in its place.

[FR Doc. 2013–04354 Filed 2–27–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 225, and 252

RIN 0750–AH73

Defense Federal Acquisition Regulation Supplement: Acquisition of Tents and Other Temporary Structures (DFARS Case 2012–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the DFARS to implement sections of the National Defense Authorization Act for Fiscal Year 2012 that address the acquisition of tents and other temporary structures.

DATES: *Effective* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Fernell Warren, telephone 571–372–6089.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** (77 FR 38734) on June

29, 2012, to implement sections 368 and 821 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Section 368 requires award of contracts that provide the best value, when acquiring tents and other temporary structures, regardless of whether purchased by DoD or by another agency on behalf of DoD. Section 821 amends 10 U.S.C. 2533a (the ''Berry Amendment'') to extend the restriction requiring acquisition of domestic tents to include the structural components of tents, applicable to acquisitions that exceed the simplified acquisition threshold.

No respondents submitted comments in response to the interim rule.

II. Discussion

Although no written public comments were received, DoD has amended the final rule as follows in response to verbal questions, which indicated possible misinterpretation of the interim rule.

A. Tents and Structural Components of Tents

Question: Does the term ''structural components'' apply just to tents, or also to tarpaulins and covers?

Response: The vertical listing of the items at 225.7002–1(a)(3) and 252.225–7012(b)(3) ensures clarity that the phrase ''structural components'' only applies to tents and not also to tarpaulins and covers.

B. Best Value When Acquiring Tents and Other Temporary Structures

Question: Does the Berry Amendment now apply to temporary structures?

Response: The interim rule addressed at DFARS 225.7002–1(a)(3)(i) the requirement to award contracts that provide best value, when acquiring tents and other temporary structures. DFARS 225.7002–1 implements the domestic source restrictions of the Berry Amendment (10 U.S.C. 2533a). However, temporary structures are not covered under the Berry Amendment. Therefore, this requirement relating to best value has been moved to DFARS 215.101, supplementing FAR 15.101, Best value continuum. This will remove any implication that temporary structures are covered by the Berry Amendment.

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. The Office of Information and Regulatory Affairs has determined that 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 does not expect this final 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.* However, a final regulatory flexibility analysis has been prepared and is summarized as follows:

The objectives of this final rule are to—

- Require that contracts for the acquisition of tents and other temporary structures provide best value, regardless of whether purchased by DoD or by another agency on behalf of DoD; and
- Extend the domestic source restriction of 10 U.S.C. 2533a (the ''Berry Amendment'') to cover the structural components of tents, in order to promote the use of domestic materials and enhance growth of the United States economy.

The legal basis for this final rule is sections 368 and 821 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). The requirement to award contracts that provide best value to the Government does not have any impact on small business entities, because that is already a general requirement for all acquisitions.

The domestic source restriction on the structural components of tents does not apply below the simplified acquisition threshold. This restriction may affect approximately 40 or fewer small business concerns at the prime contract level. Review of the Fiscal Year 2011 data on acquisition of items with product or service code 8340 (tents or tarpaulins) identified 49 actions with small business concerns (contracts or orders), estimated value of $48.6 million, of which about 10 percent appeared to be for other than tents (e.g., prefabricated metal buildings and components, metal household furnishings, or electrical equipment). The Federal Procurement Data System does not provide data on components, so it is not known the extent to which the providers of tents currently utilize domestic or foreign structural components. An exception may be granted if a component is domestically nonavailable. However, this rule promotes the use of domestic components, and should, therefore, be favorable to small entities that provide domestic structural components of tents. The requirements of the rule for use of domestic components will not apply below the simplified acquisition threshold.

This rule does not impose any reporting or recordkeeping requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives that would accomplish the stated objectives of the statute. The rule specifically implements the statutory requirement.

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).

List of Subjects in 48 CFR Parts 215, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 215, 225, and 252 which was published at 77 FR 38734 on June 29, 2012, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 215, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Subpart 215.1 is added to read as follows:

Subpart 215.1—Source Selection Processes and Techniques

Sec.

225.101 Best value continuum.
215.101–70 Best value when acquiring tents or other temporary structures.

215.101 Best value continuum.

215.101–70. Best value when acquiring tents or other temporary structures.

(a) In accordance with section 368 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), when acquiring tents or other temporary

structures for use by the Armed Forces, the contracting officer shall award contracts that provide the best value. Temporary structures covered by this paragraph are nonpermanent buildings, including tactical shelters, nonpermanent modular or pre-fabricated buildings, or portable or relocatable buildings, such as trailers or equipment configured for occupancy (see also 246.270–2). Determination of best value includes consideration of the total life-cycle costs of such tents or structures, including the costs associated with any equipment, fuel, or electricity needed to heat, cool, or light such tents or structures (see FAR 7.105(a)(3)(i) and PGI 207.105(a)(3)(i)).

(b) The requirements of this section apply to any agency or department that acquires tents or other temporary structures on behalf of DoD (see FAR 17.503(d)(2)).

PART 225—FOREIGN ACQUISITION

■ 3. Section 225.7002–1 is amended by revising paragraph (a)(3) to read as follows:

225.7002–1 Restrictions.

(a) * * *

(3)(i) Tents and the structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 4. Section 252.212–7001 is amended by removing the clause date ''(DEC 2012)'' and adding ''(FEB 2013)'' in its place, and in paragraph (b)(9) removing ''(DEC 2012)'' and adding ''(FEB 2013)'' in its place.

■ 5. Section 252.225–7012 is amended by removing the clause date ''(DEC 2012)'' and adding ''(FEB 2013)'' in its place, and by revising paragraph (b)(3) to read as follows:

252.225–7012 Preference for certain domestic commodities.

* * * * *

(b) * * *

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

* * * * *

[FR Doc. 2013–04355 Filed 2–27–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 219 and 252

[DFARS Case 2009–D002]

RIN 0750–AG40

Defense Federal Acquisition Regulation Supplement; Electronic Subcontracting Reporting System

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule, amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to the FAR regarding policy and procedures related to the Electronic Subcontracting Reporting System.

DATES: *Effective* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Lee Renna, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 75 FR 65439 on October 25, 2010, to amend section 219.708, clauses 252.212–7001, 252.219–7003, and 252.219–7004, and sections I–105 and I–112 of Appendix I, to provide DoD-specific procedures and policies related to the Electronic Subcontracting Reporting System (eSRS). There were no comments received in response to the interim rule. Accordingly, the interim rule amending 48 CFR parts 219, 252, and Appendix I, is adopted as a final rule with only minor technical changes at 219.708.

II. Executive Order 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. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 small businesses are not required to have subcontracting plans and, therefore, are not required to use eSRS to submit reports on their progress in achieving the goals in those plans.

IV. Paperwork Reduction Act.

This final rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 35). This rule provides DoD instructions on how to submit reports that are already required by the FAR and are covered under Office of Management and Budget Clearance Numbers 9000–0006, Subcontracting Plans/Individual subcontract Report (SF 294) and 9000–0007, Summary Contract Report.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 219 and 252, which was published in the **Federal Register** at 75 FR 65439 on October 25, 2010, is adopted a final with the following changes:

PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41. U.S.C. 1303 and 48 CFR Chapter 1.

■ 2. Section 219.708 is amended by revising paragraph (b)(1) to read as follows:

219.708 Contract clauses.

(b)(1)(A) Except as provided in paragraph (b)(1)(B) of this section, use the clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts)—

(*1*) In solicitations and contracts that contain the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(*2*) With its Alternate I in contracts that use Alternate III of 52.219–9, Small

Business Subcontracting Plan. (B)(*1*) In prime contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small Business Subcontracting Plan.

(*2*) However, also include in the prime contract, solely for the purpose of flowing the clauses down to subcontractors—

(i) FAR clause 52.219–9, Small Business Subcontracting Plan, and 252.219–7003; or

(ii) When the contract will not be reported in FPDS (see FAR 4.606 (c)(5)), FAR clause 52.219–9, Small Business Subcontracting Plan with its Alternate III and 252.219–7003 Small Business Subcontracting Plan (DoD Contracts) with its Alternate I.

* * * * *

[FR Doc. 2013–04362 Filed 2–27–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[DFARS Case 2012–D006]

RIN 0750–AH57

Defense Federal Acquisition Regulation Supplement: Alleged Crimes By or Against Contractor Personnel

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 and expand coverage on contractor requirements and responsibilities relating to alleged crimes by or against contractor personnel.

DATES: *Effective* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, telephone 571–372–6098.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 77 FR 14490 on March 12, 2012, to revise paragraph (d) of the clause at DFARS 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, to require contractors to provide information to their employees on how and where to report alleged crimes and where to seek assistance or whistleblower protection. These requirements apply to all DoD contracts that authorize contractor personnel to accompany U.S. Armed Forces deployed outside the United States in contingency operations, humanitarian or peacekeeping operations, or other military operations when the latter are designated by the combatant commander. Section 854 of the NDAA for FY 2009 (Pub. L. 110–417) applied this requirement just to contracts performed in Iraq and Afghanistan. Four respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Changes From the Proposed Rule

The Defense Criminal Investigative Service was added to the list at paragraph (d)(6) of the clause, and the title for the U.S. Army Criminal Investigation Command was corrected. In addition, the explanation of the impact of the changes was clarified in Section I, Background, of this notice.

B. Analysis of Public Comments

1. Add the Defense Criminal Investigative Service to the List of Appropriate Investigative Agencies

Comment: One respondent requested the addition of the Defense Criminal Investigative Service (DCIS) to the list of appropriate criminal investigative agencies to which suspected crimes should be reported. DCIS is the criminal investigative arm of the DoD Office of the Inspector General, and it also investigates alleged crimes involving contractor personnel.

Response: The requested change has been made.

2. Update the Information on the U.S. Army Criminal Investigation Command

Comment: One respondent stated that the U.S. Army's criminal investigative unit was established as a major command on September 17, 1971, and renamed the ''U.S. Army Criminal Investigation Command.''

Response: The requested change has been made.

3. Clarify the Impact of the Change on Applicability of These Requirements

Comment: A respondent stated that the explanation of the proposed change and its impact in the proposed rule (77 FR 14490) were not clear and implied that the applicability of the clause at DFARS 252.225–7040 was proposed for revision, without, however, actually amending the clause prescription.

Response: The ''Background'' section of the proposed rule could have been interpreted more than one way. However, the preamble to this final rule makes clear that there is no change to the applicability of DFARS clause 252.225–7040.

4. Consider Imposing a Range of Penalties in the Event of Noncompliance

Comment: A respondent expressed support for ''these relatively modest requirements on contractors.'' In addition, the respondent suggested that, to strengthen accountability, DoD should consider imposing a range of penalties in the event of noncompliance, ''much like non-compliance with the trafficking in persons provision in the Federal Acquisition Regulation (FAR) subjects contractors to the following remedies:

(1) Requiring the contractor to remove a contractor employee or employees from the performance of the contract;

(2) Requiring the contractor to terminate a subcontract;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the government determined contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.''

The respondent cited FAR 52.222–50(e) as the source for the above list.

Response: Most or all of the remedies that are cited by the respondent are already available to the Government in the event of noncompliance by a contractor with the requirements of a clause that is included in its contract. It is not necessary to cite them in each individual contract clause to which they may be applied.

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. The Office of Information and Regulatory Affairs has determined that 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

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

DoD is expanding coverage on contractor requirements and responsibilities relating to alleged crimes by or against contractor personnel. These requirements will be included in any contract that authorizes contractor personnel to accompany U.S. Armed Forces deployed outside the United States in (1) Contingency operations; (2) humanitarian or peacekeeping operations; or (3) other military operations or military exercises, when designated by the combatant commander. DoD is accomplishing this change by modifying the clause at DFARS 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

The two key requirements are for the contractor to (a) report any alleged offenses against the Uniform Code of Military Justice and the Military Extraterritorial Jurisdiction Act to appropriate investigative authorities and (b) give contractor personnel who work in covered areas information on how and where to report an alleged Uniform Code of Military Justice or Military Extraterritorial Jurisdiction Act offense. The clause also provides contact information for the four criminal investigative agencies in the DoD.

No significant issues were raised in the public comments received in response to the proposed rule. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

The rule will apply equally to all contractors, large and small, performing in deployed areas. Approximately 184 small businesses may be impacted by these changes annually. However, there are no projected reporting, recordkeeping, or other compliance requirements associated with the proposed rule. The points of contact for reporting alleged crimes and/or seeking whistleblower protection are listed in the clause. Contractor compliance requirements have been limited to passing this clear, available information to their personnel. Because the burdens associated with these requirements have already been minimized, there are no significant alternatives that could further minimize the already minimal impact on businesses, small or large.

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).

List of Subjects in 48 CFR Part 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR part 252 as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 252.225–7040 is amended by—

■ a. Removing the clause date ''(JUN 2011)'' and adding ''(FEB 2013) in its place;

■ b. Revising paragraph (d)(3)(ii); and

■ c. Adding paragraphs (d)(4) through (7).

The revision and addition read as follows:

252.225–7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

* * * * *

(d) * * *

(3) * * *

(ii) That many of the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws;

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at *http://www.cid.army.mil/reportacrime.html;*

(ii) Air Force Office of Special Investigations at *http://www.osi.andrews.af.mil/library/factsheets/factsheet.asp?id=14522;*

(iii) Navy Criminal Investigative Service at *http://www.ncis.navy.mil/Pages/publicdefault.aspx;*

(iv) Defense Criminal Investigative Service at *http://www.dodig.mil/HOTLINE/index.html;*

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800–424–9098 or *www.dodig.mil/HOTLINE/index.html.* Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

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Proposed Rules

Federal Register
Vol. 78, No. 40
Thursday, February 28, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AE21

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of the Electronic Benefit Transfer-Related Provisions of Public Law 111–296

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations governing the WIC Program, incorporating the provisions set forth in the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) related to Electronic Benefit Transfer (EBT) for the WIC Program. The HHFKA was signed into law by President Obama on December 13, 2010.

DATES: To be assured of consideration, comments must be postmarked on or before May 29, 2013.

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302, (703) 305–2746.
- *Web site:* Go to *http://www.fns.usda.gov/wic.* Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

I. Overview

This proposed rule would amend the WIC regulations to implement provisions related to EBT in the WIC Program included in Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), signed into law on December 13, 2010. FNS issued policy and guidance to WIC State agencies on the implementation of the legislative requirements addressed in this rulemaking that were effective on October 1, 2010. However, selected areas of the law are discretionary and therefore, FNS is seeking public comment on several of the requirements contained in this proposed rule.

II. Background

Providing WIC participants a specific prescription of supplemental nutritious foods based on their nutritional needs is a cornerstone of WIC's mission. Currently, the majority of WIC participants receive paper food instruments (FIs) that contain their food prescription. These FIs are then transacted at an authorized retail vendor enabling the participant to receive Program food benefits. However, issuing paper benefits is cumbersome and inefficient. Specifically, FIs present several limitations to Program stakeholders. For example, FIs restrict the number of participant shopping trips because foods contained on a FI must usually be purchased in totality. In addition, FIs do not yield data on the type, amount, and cost of foods purchased.

In line with current trends and overall public expectation of doing business and receiving services electronically, the WIC Program has been slowly transitioning the benefit issuance methodology over the past several years from paper FIs to EBT. The use of EBT in the WIC Program allows both the WIC Program and its participants to use advanced technologies in the delivery of benefits, and helps support WIC's mission to improve client services.

In 2003, the WIC Program released a strategic plan outlining its technology vision to modernize and/or replace antiquated clinic certification systems in an effort to improve client services and to move all State agencies toward delivering WIC food benefits through the use of EBT. State agencies must evaluate the cost of these upgrades in relation to the cost of total system replacements. Replacing older systems to prepare for EBT implementation is not a requirement, but could be necessary in some State agencies if the current clinic system is outdated and is unable to support EBT functionality.

It is well recognized and accepted that EBT is by far the preferred method of benefit delivery for the WIC Program, and is supported by WIC participants, authorized vendors, and State WIC administrators. Benefits of EBT include:

1. Allowing participants to purchase the complete food package items at their convenience and with discretion during the in-store transaction.
2. Helping to ensure that participants are only able to purchase WIC authorized foods and that foods are not improperly purchased or substituted due to human error, thereby decreasing opportunity for fraud and abuse of Program benefits.
3. Providing the WIC Program with data useful to improve program management and integrity. This includes data on the type, brand and cost of each food item so State agencies can better control food costs through informed food package decisions and improved rebate billing for infant formula and other foods.
4. Enabling the vendor to complete the WIC transaction efficiently and properly in the checkout lane.
5. Substantially reducing back office accounting time and cost necessary for handling and accounting for food instruments; including allowing for the vendor to file claims and be paid more promptly.

Over the past 15 years, FNS has continued to support and promote WIC EBT through collaborative efforts with WIC State agencies, retail vendor

groups, the banking industry, EBT processors, and a variety of other EBT stakeholders. With limited funding, progress has been slow but steady. The provisions in the HHFKA support this progress and address many important aspects of WIC EBT implementation. As State agencies move forward with WIC EBT, it is critical that standard business practices, policies, and requirements are followed to collaboratively expedite EBT implementation and maximize resource utilization. FNS recognizes that State agencies currently have some latitude in implementing Program requirements; however, as the Program moves toward national technical standards and systems, standardization will become increasingly important for all stakeholders to facilitate EBT implementation.

Building on the experience of current State WIC EBT projects, FNS continues to support and facilitate the expansion and transfer of those State EBT systems that are affordable. Currently, two EBT technologies are successfully in use in the WIC Program and both technologies have proven to be affordable. However, much debate continues to exist in the WIC community over EBT card technologies. The two technologies in use today are: (1) Offline, smart card technology that has an embedded microchip that stores the participant's food benefit prescription information on the chip; and (2) online, magnetic stripe technology similar to a traditional debit card that accesses an online database where the participant's benefit account is maintained. As part of the planning process that State agencies must follow, they must conduct a thorough analysis assessing the technology alternatives, which includes a feasibility study and cost analysis of implementing each technology solution, and an analysis of which technology would be the best fit given a State agency's business practices and operational requirements. As each State agency has unique requirements and resources that must be fully evaluated in order to choose the most appropriate technology platform, FNS remains technology neutral in supporting current and future WIC EBT initiatives. The provisions in this proposed rule apply to all available EBT technologies.

WIC benefits are not associated with a specific dollar amount as are benefits in other programs such as the Supplemental Nutrition Assistance Program (SNAP), but rather are provided in the form of a prescribed food package in which the participant may only purchase specific food items, package sizes, and quantities. For example, a WIC participant may be issued a food package that contains 2 dozen eggs and 3 gallons of milk for purchase. Conversely, a SNAP participant is issued a specific dollar amount to purchase any food or food products prepared for human consumption, except alcoholic beverages and tobacco, hot foods, or foods prepared for immediate consumption. Since SNAP benefits are authorized for a specific dollar amount, benefit redemption transactions at the retail point of sale (POS) are essentially a financial transaction settled in a manner similar to other electronic payment types such as debit. WIC benefits, on the other hand, are limited to the food items specified on the EBT card and the foods authorized for purchase by each WIC State agency. Due to the restrictive nature of WIC benefit issuance, a WIC EBT transaction is often considered one of the most complex transactions at the retail POS.

Given the challenges of the complex food benefit and technology needed to support those complexities, and the nationwide WIC EBT implementation requirement of October 1, 2020, the provisions in this proposed rule are critical for WIC State agencies, retailers, system developers and EBT processors to effectively implement the mandate. Establishment of these provisions will promote consistency, save resources and streamline EBT implementations, which will ultimately reduce barriers as WIC moves ahead with EBT implementation. FNS will continue to provide technical assistance to support WIC EBT expansion efforts. While these regulations and associated policies are necessary, it must be noted that dedicated and sustained funding is also critical to help WIC State agencies implement this important technological advancement that will fundamentally change and improve the delivery of WIC food benefits.

The following is a discussion of each proposed WIC EBT provision.

1. Definitions

Electronic Benefit Transfer. Pursuant to section 17(h)(12)(A)(i) of the CNA, the term ''electronic benefit transfer'' means a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to WIC Program benefits. This proposed rule would amend § 246.2 to add the definition of EBT.

Cash-Value Voucher/Cash-Value Benefit. Federal WIC regulations (§ 246.2) provide definitions for cash-value vouchers (CVV) and food instruments, and within those definitions, refer to an EBT card as a means to obtain WIC food benefits. However, as EBT cards are not technically considered vouchers in an EBT environment, the Department seeks to lessen confusion by proposing to amend the current definition by clarifying that a cash-value voucher is also a cash-value benefit (CVB) in an EBT environment.

Participant Violation. Federal WIC regulations (§ 246.2) identifies the sale of WIC benefits (cash-value vouchers, food instruments, EBT cards, and/or supplemental foods) by participants as a participant violation, but does not specifically address the offer of or intent to sell WIC benefits. In addition, as technology has advanced, opportunities to sell items have expanded from print to online through various social media. Protecting the integrity of the program has always been a primary objective of the Department and State agencies. Therefore, this proposed rule would expand the definition of participant violation in § 246.2 to include the offer or intent to sell WIC benefits. The revision would also make it clear that the list of participant violations that appears in the definition is not exhaustive, thus giving WIC State agencies greater ability to develop policies and procedures to address emerging issues relating to participant abuse and program integrity. This change also clarifies that any form of fraud and abuse, such as using WIC benefits in any way other than the method for which they were intended, is a violation of Program regulations. Further, consistent with § 246.23(c)(1), State agencies are expected to sanction and issue claims against participants for all program violations.

2. Statewide Implementation of EBT by October 1, 2020, and Exemptions

Pursuant to section 17(h)(12)(B) of the CNA, each State agency must implement an EBT system throughout the State by October 1, 2020, unless the Secretary grants a temporary exemption. The law also requires State agencies be responsible for the coordination and implementation of their WIC EBT system. This proposed rule outlines these requirements. It would amend § 246.12(a) to add the statewide implementation requirement of EBT by October 1, 2020, and provide information on allowable exemption criteria at § 246.12(w)(2).

Federal WIC regulations (§ 246.12(b)) currently allow WIC State agencies to implement any of the three types of food delivery systems—retail, home delivery, or direct distribution. The HHFKA defined EBT as a ''food delivery system.'' Therefore, this proposed rule

would add EBT as a fourth type of food delivery system that a State agency may operate under its jurisdiction. At this writing, the Department acknowledges that EBT is merely an electronic means by which the food benefits are accessed in a retail delivery system, rather than as a separate food delivery system as stated by law. Nonetheless, the Department is cognizant that further technological advances may allow the use of EBT as a means by which the food benefits are accessed in other types of food delivery systems. To address the significant differences in an EBT food delivery system versus the other food delivery systems currently defined in the regulations, and to provide clarity on the requirements specific to the EBT food delivery system, this proposed rule would add paragraphs § 246.12(w) through (cc). Other requirements for retail operations that are more general in nature that are still applicable in any EBT retail environment (paragraphs § 246.12(g) through (l)) would remain unchanged and would be cross-referenced in the proposed rule in § 246.12 (z)(1).

Section 17(h)(12)(C) of the CNA authorizes the Secretary to grant temporary exemptions to the statewide EBT requirement if the State agency can demonstrate one or more of the following: (1) There are unusual technological barriers to implementation; (2) operational costs are not affordable within the nutrition services and administration (NSA) grant of the State agency; or (3) it is in the best interest of the WIC Program. Any State agency that requests a temporary exemption must specify a date by which it anticipates statewide implementation. Further clarification and discussion of the process to determine if an exemption is warranted follows.

Currently FNS requires each State agency to complete a cost analysis and feasibility study as part of their planning efforts prior to expending resources (both staffing and funding) on EBT. The following components must be assessed: WIC management information system capability; WIC business capacity; retailer technical capabilities; retailer equipage; financial considerations; infrastructure considerations; and electronic card options. A State agency's planning efforts will usually result in a 2–5 year plan for the State to implement WIC EBT. To ensure progress is made towards the goal of nationwide EBT implementation by October 1, 2020, § 246.12(y)(3) of this proposed rule would require each State agency to have an active WIC EBT project by October 1, 2015. An active EBT project is defined as a formal process of planning, design, pilot testing, or statewide implementation of WIC EBT. If, at the time of this publication, a State agency does not have an active EBT project, the State agency would be required to submit for FNS review and approval a Planning Advance Planning Document (PAPD) prior to October 1, 2015, to ensure FNS has at least 60 days for review, as required by FNS Handbook 901. The development and implementation of EBT in the WIC Program is a complex process and requires dedicated staff and resources. The magnitude of carrying out a WIC EBT project should not be underestimated and, therefore, it is vital that State agencies begin planning for EBT at least five years prior to the mandated statewide EBT implementation date of this proposed rule.

As each State agency conducts their EBT planning activities and chooses which EBT technology is most feasible to implement in their individual State, they must also examine any unusual technological barriers that could jeopardize or interfere with their ability to implement WIC EBT. The Department is aware that some State agencies may not have the infrastructure necessary to implement EBT by the October 1, 2020, implementation deadline requirement. Section 246.12(w)(2)(i) of the proposed regulation would allow for an exemption to implement EBT should the State agency encounter technological barriers that would prevent implementation. Nonetheless, the Department recognizes that identified barriers may be reduced over time due to technological advances and therefore would require, as part of the State agency's annual update, a periodic reassessment of these barriers to implementation.

As noted, all WIC State agencies must conduct a cost analysis during their EBT planning process in order to ensure EBT operational costs after implementation are affordable within their NSA grant. At this writing, all WIC State agencies that have implemented EBT statewide have determined that EBT is affordable using their individual NSA grants, but the Department recognizes this may not be the case for all State agencies in the future. Therefore, § 246.12(w)(2)(ii) of the proposed regulation would allow for an exemption to EBT implementation should EBT be determined, after a thorough cost analysis, to be unaffordable within a State agency's NSA grant. WIC does not have the requirement that EBT be cost neutral to its paper food instrument costs.

Although EBT implementation by October 1, 2020 is mandated by law, the Department remains cognizant of the impact of EBT systems on State agencies, vendors, and WIC participants. There may be unusual circumstances within the State agency which may indicate EBT would not improve benefit delivery or would negatively affect WIC participants. The Department proposes at § 246.12(w)(2)(iii) that an exemption to implement EBT be allowed if a State agency determines that such an exemption would be in the best interest of the WIC Program.

FNS supports the vision of improving the integrity and operational efficiency of the Program through nationwide EBT implementation, while acknowledging the exemptions allowed by the HHFKA. Section 246.12(w)(3) proposes any such approved exemption not exceed three years, as FNS believes this is a reasonable timeframe for a State agency's situation to change relative to the ability to implement EBT. Further, if exemptions are granted, it will not relieve a WIC State agency of the annual EBT status reporting requirement, as proposed in § 246.4(a), as the State agency must still demonstrate its progress toward EBT statewide implementation.

3. EBT Status Reporting

Pursuant to Section 17(h)(12)(D) of the CNA, each WIC State agency must submit to FNS an EBT project status report to demonstrate the progress of the State agency toward statewide implementation. The HHFKA requires that if the State agency plans to incorporate additional programs in the WIC EBT system of the State, it must consult with the State agency officials responsible for administering those additional programs prior to submitting the WIC EBT planning documents to FNS for approval.

Each WIC State agency submitted an initial EBT implementation plan to FNS in April 2011, outlining when it would implement an EBT system, with October 1, 2020, being the latest date permitted for implementation. This proposed rule at §§ 246.4(a) and 246.12(y)(4) would require that an annual update of the State agency's goals and objectives regarding EBT implementation be submitted as part of the State agency's State Plan of Operations. The annual update would document the State agency's progress toward accomplishing EBT implementation by the mandated deadline. Information submitted would include, but not be limited to, information on changes to the implementation plan that alters the

implementation date, project scope or description, risks to the project, challenges or barriers anticipated or encountered, projected and actual costs, and actions taken to mitigate project risks. As proposed in § 246.12(y)(4)(i), State agencies that have been approved by FNS through the Advance Planning Document (APD) process to conduct EBT planning or EBT implementation activities, but are not yet implemented statewide, would be exempt from the annual update requirement, as this information would already be contained in the APD. State agencies that have already implemented EBT statewide would be required, as proposed in § 246.12(y)(4)(ii), to annually address any updated information for future EBT activities, plans for system updates, re-procurements, or other major activities impacting its EBT system.

The Department recognizes the significant time and effort currently put forth by State agencies in gathering information and submitting reports as requested or required by FNS. As such, the Department proposes that the required EBT status reports be incorporated into the State agency's annual State Plan of Operations submission in an effort to reduce burden and potential duplicative reporting efforts. The Department also recognizes that while it may be difficult for some State agencies to predict accurate implementation dates, a thorough effort must be made regarding the annual status reports so that FNS can ascertain, with some level of assurance, that State agencies are on track to meet the goal of statewide EBT implementation by October 1, 2020. EBT status report submissions are essential and imperative to the Department as a means for planning the budget, staffing, and other resources that may be required to facilitate successful nationwide EBT implementation.

4. EBT Cost Impositions on Vendors

Current WIC regulations at § 246.12(g)(5) restrict State agencies from imposing costs for equipment, systems, or processing required for EBT on any retail store authorized to transact food instruments, as a condition for authorization or participation in the WIC Program. The State agency may, however, allow retail vendors to contribute to such costs on a voluntary basis, as a number of retailers have already done. Since WIC EBT has demonstrated improved vendor operations and efficiency, retailers may make a business decision to share the costs of WIC EBT during EBT implementation.

Section 17(h)(12)(E)(i) of the CNA retains the present prohibition of cost impositions on retail stores of EBT equipment and systems. However, as amended, the prohibition of cost impositions exclusively applies to retail stores using equipment solely for program support. Moreover, the prohibition of imposing costs on retail vendors is eliminated at Section 17(h)(12)(E)(iv) of the CNA for those State agencies which have completed statewide expansion of WIC EBT. Therefore, State agencies that have implemented EBT statewide would require a retail vendor applying for authorization to become a WIC vendor to demonstrate the capability to accept WIC EBT benefits prior to authorization by the State agency, unless the State agency determines the vendor is necessary for participant access.

Further, the new provision provides State agencies that have implemented EBT statewide, discretion as to whether it will incur the cost of ongoing maintenance of EBT multi-function systems and equipment. FNS proposes at § 246.12(aa)(4) to disallow all costs for maintenance fees, including the maintenance costs for stand-beside WIC-only equipment, for those State agencies that have implemented EBT statewide. FNS considers this a necessary step for the viability and affordability of WIC EBT in the future.

Statewide Implementation Cost Impositions. Prior to the HHFKA, WIC EBT State agencies could not impose any EBT costs on its authorized retail vendors, even if EBT was implemented statewide. To date, several WIC State agencies have supplemented the vendor's cost to purchase WIC EBT capable commercial equipment and software that has been certified by the State agency. The certified cash register system cost has typically included up to three years of maintenance costs. Ongoing maintenance costs are typically charged by the system provider as a monthly fee to ensure that the software and hardware are fully-functional and updated. The HHFKA specifies that State agencies may not be required to pay maintenance costs for multi-function equipment once the WIC EBT system is implemented statewide.

This proposed rule would preclude a statewide EBT State agency from incurring maintenance costs essential to, and directly attributable to, an EBT system whether the equipment is multi-functional or used solely for the WIC Program; all such costs would be considered unallowable costs. Disallowing these costs supports the promotion of the use of multi-function equipment which streamlines the transaction for both the participant and vendor; prevents the unintentional incentive to retail vendors to use fully-funded government equipment solely used to support the program; eliminates the risk of State agencies being obligated to fund maintenance costs of equipment purchased by the retail vendor at its time of application in order to meet the requirement to demonstrate its capability to accept EBT benefits; and reduces the risk of State agencies requesting exemptions from the October 1, 2020 EBT implementation mandate on the basis of determining maintenance costs are not affordable.

To ensure that WIC EBT implementation builds on the prior initiatives and successes of EBT implementation in SNAP and other federal-state administered assistance programs, FNS seeks to accelerate the ongoing improvement efforts of the electronic delivery of benefits and promote leveraging existing commercial infrastructure in retail vendors and integrating EBT into a single multi-function system. This solution provides EBT transaction capability in all lanes; supports all current forms of SNAP, the Temporary Assistance for Needy Families program (TANF), Social Security, and other cash benefit programs; and does not require a specialized, government-supplied EBT terminal. The multi-function solution only requires a single scan to verify the participant's eligibility and register the item purchase at the POS terminal. In addition, participants have the added convenience and positive shopping experience by no longer having to separate the WIC-eligible food items from the non-WIC item, allowing them to complete their purchase faster and essentially in the same manner as any other customer in the store. Integrated systems are also beneficial to the store because it reduces cashier training time, errors and misuse, and reduces time in-lane. Relying on stand-beside WIC-only EBT equipment requires a double scan, which requires each WIC item to be scanned first to verify the participant benefits and then a second scan to register the item purchase at the POS terminal.

Criteria for Cost Sharing. Section 17(h)(12)(E)(ii) of the CNA requires that the Secretary establish cost sharing criteria to be used by WIC State agencies and retail vendors as it applies to equipment or systems that are not solely dedicated to transacting EBT for the WIC Program. This provision would apply to not only EBT equipment, but to system software necessary to complete WIC EBT transactions. To date, the Department has approved

various cost sharing strategies used by State agencies implementing WIC EBT systems to fund acquisitions of commercial cash register systems, each with separate strategies and formulas that were appropriate to their particular situation. The current practice for funding commercial WIC functionality has been to encourage and negotiate cost sharing for EBT equipment and systems with vendors as much as possible, as WIC EBT is mutually beneficial to both vendors and the State WIC Program. When this proves unfeasible, and/or Federal WIC funding has been available and it has been in the best interest of the WIC Program, FNS has typically funded WIC costs of retailer systems and equipment in totality. Where possible, funding was provided to retail vendors that operated in more than one State that would therefore have a regional or national benefit. In these cases, it is assumed that once a retail vendor has programmed its system for WIC EBT, that system can be used in another State without further costs incurred; i.e., pay once but use multiple times. This approach is congruent with current regulations and Section 17(h)(12)(E)(i) of the HHFKA that prohibits imposing costs of EBT to retail vendors during EBT implementation.

As noted, the HHFKA requires the establishment of criteria for cost-sharing by State agencies and vendors of costs associated with any equipment or system not solely dedicated to transacting EBT for the WIC Program. These costs include, but are not limited to: phone lines, internet connection, hardware, software updates associated with the equipment, and processing fees. Shared costs must be allocated, or fairly distributed, among all benefiting parties. As such, proposed § 246.12(aa)(2) would require State agencies use the Federal cost principles set out at 2 CFR part 225 (*Cost Principles for State, Local, and Indian Tribal Governments*) in allocating costs. The criteria would not only apply to shared purchased costs, but also applicable shared credits and recoveries. Compliance with these principles provides reasonable assurance that the Federal Government and the State agency bear their respective fair shares of costs incurred by the State agency to administer Federal assistance programs. When a cost benefits multiple programs or entities, each party's fair share is a portion commensurate with the benefit the program received from the State agency having incurred the cost. Determining fair share requires an objective methodology, documented and consistently applied, for allocating costs to benefiting parties. The State agency's allocation methodology would have to generate a reasonable measurement of the benefit each party receives from shared costs.

To date, FNS has remained flexible in defining cost sharing criteria and has found that what may work for one State agency may not work as well with another State. Regardless of the approach, however, each State agency's initiatives in this area would need to be fairly employed across their retailer base. The cost sharing criteria established for equipment and other associated costs that are not solely dedicated to transacting EBT for the WIC Program will follow the Federal guidance established for cost allocation principles as set forth in 2 CFR part 225. To provide reasonable assurance that these principles are being followed and that the approach is applied fairly to all retail vendors, the State agency must furnish its allocation and/or cost sharing methodology to FNS for review and approval before incurring costs.

Processing Fees. In general, the term ''processing fee'' refers to an elective charge to compensate for additional consumer services. In the WIC EBT environment, processing fees are incurred by a WIC authorized vendor from an outside service provider (called an acquirer or third party processor) who electronically ''processes'' each card purchase from the vendor to the appropriate bank or EBT processor. It is common for processing fees to be a negotiated flat fee of a range between $0.02 and $0.10 per transaction (or more) depending on the volume of transactions.

As provided in Section 17(h)(12)(E)(iii)(I) of the CNA, authorized WIC retail vendors would be required to pay commercial processing costs and fees if equipment is utilized for WIC and other transactions. A retail vendor that elects to accept EBT using multi-function equipment would pay commercial transaction processing costs and fees imposed by a third-party processor that the retail vendor elects to use to connect to the State's EBT system. While the Department understands that processing fees are not customarily charged to retail vendors who accept WIC EBT equipment from a State agency or its contracted EBT provider if the equipment is used solely for the WIC Program, this proposed rule would permit such fees after statewide implementation. This is consistent with our proposal prohibiting the cost of maintenance fees in order to encourage the adoption of multi-function equipment. The processing fees may be per transaction fees charged in lieu of ongoing maintenance fees or in some combination consistent with industry practice for commercial multi-function equipment. Processing fees would not be charged to retail vendors after statewide implementation who are needed for participant access and who accept WIC EBT equipment from a State agency or its contracted EBT provider used solely for the WIC Program. Section 246.12(aa)(3)(i) and section 246.12(aa)(4) of this rule address processing fees.

Interchange Fees. The CNA at Section 17(h)(12)(E)(iii)(II) prohibits interchange fees on WIC EBT transactions. Section 246.12(aa)(3)(ii) of this proposed rule reflects this prohibition. An interchange fee is the term used in the payment card industry to describe a fee paid between banks for the acceptance of card based transactions. Interchange fees are currently paid for credit and debit card transactions in the commercial environment, but not for WIC or SNAP EBT transactions. Interchange fees are paid by retailers to card issuers (the banks that sponsor the credit or debit cards). The rates are set by the card association, such as MasterCard or VISA, and are based on a combination of factors including the transaction amount, total volume, and type of business. Issuers then pay fees to the card associations.

Capability to Accept EBT Benefits. In accordance with section 17(h)(12)(E) of the CNA, proposed regulations at § 246.12(aa)(4)(ii) state that once a State agency has implemented EBT statewide, the State agency would require any prospective retail grocer seeking to become a WIC authorized vendor to demonstrate the capability to accept an EBT benefit prior to authorization. In essence, the applying retail vendor would be required to be ''EBT ready'' at the time they apply, and there would be no obligation for the State agency to provide funds to cover EBT costs in order for the retail vendor to participate in the Program. As previously mentioned, maintenance costs of EBT systems and equipment after EBT statewide implementation would be considered unallowable, thereby precluding the State agency from incurring these costs. However, a State agency may elect to fund any expense, with USDA approval, of an applicant retail vendor's costs to obtain an EBT capable cash register system in the event there is a need to ensure WIC participant access to their food benefits.

As WIC State agencies implement EBT, each WIC retail vendor chooses to either build WIC EBT functionality into their existing electronic cash register

(ECR) and commercial POS system, or purchase a separate system, or stand-beside EBT equipment, in order to have the capability to accept EBT benefits. As these systems are developed, State agencies have the responsibility to ensure they maintain the integrity of the WIC Program benefit delivery system and that Program participants have access to their benefits. State agencies currently use an extensive review, testing and certification process to help ensure WIC retail vendor's EBT systems comply with WIC EBT development guidance and WIC Program requirements. As the current retailer certification process has been found to be quite cumbersome, FNS and State agencies are currently seeking ways to improve this process while still ensuring benefits are accurately deducted from WIC participant EBT cards or accounts.

FNS plans to establish procedures and guidance in the Operating Rules for the certification of retail vendor electronic cash registers and associated payment devices, to include the development of common test scripts and testing criteria. FNS is especially interested in reader comment on the proposed certification requirements that would be used to determine retail systems as ''EBT capable'' once a State agency has implemented EBT statewide. Further discussion on certification requirements follows in the Technical Standards section of this rulemaking.

5. Minimum Lane Coverage Guidelines

Section 17(h)(12)(F) of the CNA requires that the Department establish a minimum standard for installing WIC EBT equipment, or terminals, in vendor locations. This proposed rule at § 246.12(z)(2) provides a national WIC EBT vendor equipment coverage formula that would be consistent from state-to-state and establishes a minimum level of equipage for POS terminals used to support the WIC Program. This is consistent with the legislative requirement to establish national standards for implementation of WIC EBT systems, including standards for lane coverage for terminals to accept WIC EBT transactions. These minimum standards apply to all systems and equipment used to support WIC EBT, whether the equipment is multi-functional or used solely for the WIC program.

The proposed regulations at § 246.12(z)(2)(i)–(ii) requires an EBT equipment installation formula similar to the SNAP equipment installation requirements. Installation of one terminal for every $11,000 in monthly WIC sales would be required for superstores and supermarkets, and installation of one terminal for every $8,000 in monthly WIC sales would be required for all other vendors. Given the variety of farmers and farmers markets, and the variety of electronic solutions available that permit a device to be shared by several farmers, State agencies would be permitted to determine the equipment to be installed to support farmers or farmers markets authorized to accept a cash value benefit. POS devices would be installed up to a maximum of four lanes but not more than the number of lanes in a store location. This formula, contrary to SNAP regulations, does not require all lanes to be equipped for stores earning 15 percent or more of their food sales in WIC business; the HHFKA does not require such a threshold as is required in the Food and Nutrition Act of 2008 (Pub. L. 111–296). Additionally, the percentage threshold for all lanes is not necessary because most WIC-only stand-beside POS devices will be needed in locations that have fewer than three lanes. State agencies would have authority under this proposed regulation to allow for alternative installation formulas, upon FNS approval.

Because electronic payments are already prevalent in many independent grocer and supermarket lanes today, the need to install separate WIC EBT terminals should primarily apply to smaller WIC grocers rather than multi-State supermarkets that will, in most cases, use their own electronic cash registers. FNS fully expects that most situations requiring a State agency or its contractor to install WIC-only stand-beside equipment will involve smaller vendors who: (1) may not be able to afford the cost to add WIC capability to their existing cash register system; or (2) may not have an electronic cash register at all. FNS also anticipates that some multi-lane retail vendors will be equipped temporarily with WIC-only stand-beside equipment during statewide EBT expansion because some may be unable to integrate WIC EBT into their cash register systems within the State agency's implementation schedule. In these instances, the lane coverage installation formula will ensure a basic level of service to WIC participants.

In order to develop a WIC EBT lane coverage installation formula, FNS considered the current minimum lane coverage formula required by the SNAP EBT regulations. This formula establishes a threshold for food retailers (hereafter referred to as retail vendors) based on their level of SNAP business each month. The SNAP installation formula specifies that retail vendors redeeming 15 percent or more of their total food sales in SNAP benefits must have all lanes equipped. For stores below the 15 percent threshold, SNAP retailers classified as superstores and supermarkets receive one EBT terminal for every $11,000 in monthly SNAP sales. All other SNAP retailer types receive one EBT terminal for every $8,000 in monthly SNAP sales.

The two goals of the lane coverage installation formula for SNAP were to: (1) Ensure adequate access for SNAP recipients; and (2) ensure that the SNAP EBT shopping did not adversely affect time required to complete EBT purchases in the checkout lane. Actual experience has generally shown the larger supermarkets and independent stores with three or more checkout lanes utilizing their own integrated cash register equipment rather than installing separate EBT equipment under the installation formula required by SNAP regulations. This was largely the result of the adoption of electronic payment systems adopted by the grocery industry that began in the late 1980's and continued throughout the 1990's. Consequently, the vast majority of SNAP EBT-only terminals deployed by State agencies have been installed in smaller retail vendor locations with less than three lanes.

Over the years, WIC State agencies have used a variety of lane coverage installation formulas. A variant of the SNAP installation formula was used by the Texas and New Mexico WIC State agencies, both utilizing the smart card technology solution, in devising their WIC EBT equipment reimbursement formula. Both Texas and New Mexico provided funding to allow the WIC vendors to purchase their own certified commercial cash registers with WIC EBT functionality. The reimbursement formula, in essence, determined a minimum lane coverage installation formula. This reimbursement formula mirrors the SNAP EBT formula by classifying supermarket retail vendors (those with annual gross food sales of $1 million or higher) and non-supermarket retail vendors (those with annual gross food sales below $1 million). The Texas and New Mexico WIC State agencies also included a formula to specifically address the above fifty percent vendors, as defined at § 246.2 of WIC regulations, since their gross food sales reflect a higher percentage of WIC food purchases, and therefore, must be considered separately for lane coverage determinations. Lastly, these two State agencies allowed for one lane to be reimbursed for any newly authorized WIC vendor with no prior sales history available.

Additional WIC EBT State agencies each established their own lane coverage installation formulas as well, but based their formulas on either the transaction activity for paper vouchers or the availability of funding. For example, the Michigan State agency provided devices based on the following annual WIC redemption criteria: one device for redemption below $70,000; two devices for redemption between $70,000 and $200,000; three devices for redemption between $200,000 and $300,000; and four devices for redemption above $300,000. In some instances, the State agency also installed devices that were capable of providing access to WIC benefits, SNAP benefits, and cash EBT. The Kentucky WIC State agency took a similar approach equipping vendors with one device with up to $22,000 in annual WIC sales, and an additional device for every $11,000 in additional WIC sales; not to exceed a total of four devices. The Chickasaw Nation WIC State agency adopted a similar formula, but used lower thresholds in increments of $5,850 for up to four lanes. Conversely, funding constraints had to be taken in consideration for the Nevada WIC State agency, which provided equipment for two lanes per each authorized WIC vendor location, regardless of annual WIC redemption volume. The Wyoming WIC State agency also established a reimbursement formula based upon the availability of funding at the time.

Given the WIC EBT State agencies' lane coverage experiences to date, FNS believes the SNAP equipment formula represents a reasonable and consistent basis to allow WIC participants to purchase their WIC foods in the same manner as all other non-program customers. Therefore, FNS is proposing a similar lane coverage formula as the SNAP installation formula. This proposed solution will also help better align equipment in stores and streamline the number of devices installed if a store location is authorized for both the WIC and SNAP programs.

FNS proposes at § 246.12(z)(2) that during initial EBT implementation, State agencies be required to equip no more than four lanes with WIC EBT terminals at no cost to the WIC vendor in accordance with the guidelines noted above. (Vendors can agree to incur some of these costs voluntarily). State agencies would not be required to provide more devices than the number of lanes in the location. For example, if a vendor qualifies for three lanes based upon their level of WIC redemptions, but only has two checkout lanes, only two devices will be provided by the State agency. However, a State agency may elect to provide an additional device to be used at the customer service counter, or nearby, in order to allow WIC participants to obtain their current WIC food balance without being limited to only obtaining the information in a checkout lane. Newly authorized vendors would be provided one device initially unless the State agency is aware of prior WIC redemption levels in that location that would justify additional terminals to ensure adequate participant shopping access.

Once a State agency has implemented WIC EBT statewide, the State would continue to provide a single terminal for newly authorized vendors the State agency has determined are necessary for WIC participant shopping access. However, if participant access is not an issue, the State agency would require vendors applying for WIC authorization to obtain their own WIC EBT capable register system in order to accept WIC benefits. Please refer to the section related to imposition of costs on WIC vendors for further information on this issue.

In some instances, WIC State agencies have worked with their SNAP agencies to acquire WIC and SNAP EBT services through a single contract, which would permit a single POS terminal device to be installed in authorized vendor locations that accept both WIC and SNAP benefits. The Michigan and Nevada WIC State agencies have done this, although through different processes. FNS takes no position relative to the advantages or disadvantages of such an approach. It is also very likely a WIC State agency will encounter retail vendor locations with a SNAP EBT-only device. We encourage State agencies to work with their SNAP counterparts to avoid situations where installation of two government devices in the same retail vendor check-out lane is necessary. Where there is a common contractor providing EBT services for both WIC and SNAP EBT to the State, it has been customary to replace the SNAP EBT-only device with a combination device capable of accepting both WIC and SNAP benefits. FNS would be interested in comments from State agencies and industry on ways a single device may be utilized when there is not a common contractor shared between the WIC and SNAP agencies. If the WIC State agency has determined that a joint WIC and SNAP/Cash EBT terminal is necessary, an alternate lane coverage formula may be proposed for FNS approval that takes into account use of the same terminal device for access by WIC, SNAP and any cash benefit Program participants. The appropriate allocation of the costs for these shared devices must be included in the Implementation Advance Planning Documents provided for FNS approval.

6. Technical Standards and Operating Rules

Background. FNS has long recognized that standards and common business rules are needed for successful WIC EBT implementation. In the early smart card WIC EBT implementations, common file formats were defined so vendors could easily accept the electronic lists of approved WIC foods from multiple State agencies. Vendors and State agencies also identified the need to use standard file formats for the daily payment claim and hot card files exchanged in the smart card EBT systems and Approved Product List (APL) files that all EBT systems exchange with vendors. Similarly, in the online WIC EBT environment, efforts were made to add WIC components to the standard online messages used to approve each purchase. The American National Standard Institute (ANSI) developed the X9.93 standards for WIC systems as a result of these needs. X9.93 standards addressed message standards for online WIC EBT and file formats for both online and smart card WIC EBT.

Early implementers of WIC EBT were required to comply with the ANSI standard but had some flexibility in their implementations to do what was best for them in order to successfully implement their projects. In the smart card/offline environment, Texas and New Mexico WIC Programs agreed to implement the technical standards, although Texas implemented a more complex settlement server solution compared to New Mexico, which resulted in some differences in file handling. Similarly, in the online EBT environment the X9.93 standard allowed for two different purchase processes which resulted in differences between the Michigan and Kentucky WIC EBT online systems compared to the Nevada WIC EBT online system. After some discussions, it was determined that the online approach taken by Michigan and Kentucky would prevail for purchases involving integrated vendors in their online environment.

Efforts are now underway to further refine and expand technical standards and operating rules applicable to WIC EBT. The goal of these efforts is to have rules and standards that will promote a single smart card implementation process and a single online implementation process that results in faster and less costly EBT adoption by

State agencies and other stakeholders. As additional State agencies implement WIC EBT, they will be able to take advantage of the integrated retail cash register systems and other components of the payments system that comply with the common specifications. Other standards related to EBT are also being developed, such as Management Information System (MIS) to EBT system interface specifications and standard retailer certification processes, which will further simplify and streamline future EBT implementations for WIC State agencies, allowing them to capitalize and benefit from earlier implementation efforts.

Operating Rules and Technical Implementation Guide (TIG) Development. Section 17(h)(12)(G) (ii) of the CNA requires that State agencies, contractors and authorized WIC vendors participating in the Program demonstrate compliance with established technical standards and operating rules. Failure to comply with the Operating Rules would result in actions consistent with violations outlined in the vendor agreement found at section 246.12(h)(3) that apply to authorized retail vendors. Two of the most comprehensive compilations of standards and rules established for WIC EBT are the EBT Operating Rules and the TIG. The Operating Rules spell out the basic business rules for each function in an EBT system so that implementations will be consistent among each of the stakeholders participating in the WIC EBT payment network. The TIG, which is based on the ANSI X9.93 standard, supplements the Operating Rules with more specific technical information and guidance on what food vendors must do to support WIC EBT.

Given that technology is continually advancing, it is recognized that these standards and rules may not contain all necessary standards and rules that may be identified as we continue to expand WIC EBT, and that current and future standards will evolve over time. Therefore, the proposed rule at § 246.12(bb)(1)(i), which addresses the Operating Rules and technical standards, is written broadly and allows for updating in the future as technology advances.

As noted, FNS feels strongly that in order to implement WIC EBT nationwide, a common set of technical standards and operating rules must be followed to facilitate EBT expansion efficiently and consistently from state to state. To respond to this need, the EBT Operating Rules and TIG were created that address, respectively, the ''what'' and ''how'' of EBT implementations. FNS, State agencies, and industry stakeholders collaboratively developed the EBT Operating Rules and TIG to help guide State agencies and industry in implementing WIC EBT systems. This collaborative effort has enabled the Operating Rules and TIG to be accepted and implemented among EBT State agencies, their authorized vendors, processors and other stakeholders. The Operating Rules establish national practices consistent with FNS and state policies that affect the WIC EBT payment process, and follow the card payment models in use by the credit, debit and EBT SNAP/Cash payment networks.

The Operating Rules and TIG impact retailers, acquirers, third party processors and EBT host systems (state or contractor). For vendors and their cash register software, a national set of Operating Rules enables them to update their cash registers to handle WIC purchases, discounts, receipts, security and exception handling in all states where they conduct business. Acquirers, the companies that provide software, hardware and other payment services to authorized WIC vendors, will also be able to update their systems once and provide service to the many vendors they conduct business with. A single set of Operating Rules facilitates EBT implementation by allowing authorized vendors and their acquirers to provide service in multiple State agencies using one set of ''business rules,'' thus saving significant time and money to support WIC EBT. These Operating Rules and technical guidelines make WIC EBT cost effective for vendors to support their integrated cash register systems.

Third party processors, the companies that move electronic transactions to card issuers (EBT hosts for WIC) for payment and provide reimbursement to their WIC authorized vendors for all purchases approved electronically, use the Operating Rules to standardize processing and to establish common liability provisions in the multiple contracts they enter into with authorized WIC retail vendors and others in the payment process. For EBT host providers, either an EBT processor or a State agency, the Operating Rules and TIG permit consistent processing of all transactions among State agencies. The TIG requirements are crucial to host EBT providers because they define how the technical data in each purchase must be included in an online WIC EBT purchase message response that must be received and processed by a retail vendor cash register system. For a smart card system, the purchase details identified in the TIG are written to a claim file that is later sent to the State agency for payment.

The present Operating Rules are divided into several sections that outline requirements for acquirers, WIC vendors, issuers (states) and card holders (WIC participants). The TIG provides technical guidance on the use of the ANSI X9.93 messages and files to ensure consistency in WIC State agency EBT implementations. There are also sections that discuss the card requirements such as the location of the magnetic stripe or smart card chip, the card numbering system and applicable technical standards. Because WIC EBT requires the exchange of unique files with authorized vendors that are not necessary for other payment tender types, the business rules are defined for the various files that are exchanged daily with authorized WIC vendors. For example, an Authorized Product List (APL) file is one of the files that are exchanged with vendors daily. The APL file contains all of the Universal Product Codes (UPC) and Price Look-Up (PLU) codes approved for use within a State agency. UPCs are 12 digit numbers embedded in a bar code printed on a product label that can be read by scanners in a checkout register. PLUs are 4 or 5 digit numbers associated with specific fruits or vegetables (e.g. bananas have a PLU of 4011). The APL file is stored at the electronic cash register to allow the WIC retail vendor to identify food items scanned at the checkout counter as WIC or non-WIC items. The APL file section in the TIG specifies the technical information on the file structure and specific data elements in each State agency's APL file. To illustrate the need for flexibility to allow for updates and changes, a future change request might allow for a farmers market application on a smart phone to use an abbreviated APL file and provide a balance receipt that contains only the CVB balance rather than all food balances associated with the participant's EBT card.

As a second example, the Operating Rules define business rules for payment/reimbursement to vendors. Current WIC regulations require WIC State agencies to pay vendors within 60 days after valid paper food instruments have been submitted for redemption by vendors. Although 60 days is a realistic and necessary timeframe in the paper environment, established industry standards in the EBT environment require the exchange for payment in a much shorter timeframe. All stakeholders concurred through collaborative efforts in defining the Operating Rules that State agencies should pay vendors, farmers and home

food delivery contractors within two days of submitting a valid electronic claim for payment to mirror industry standards. To allow for the greatest flexibility in this area, § 246.12(z)(3) proposes to require payments be made to vendors, farmers and home food delivery contractors in accordance with established rules and technical requirements. This broad language will also allow for future electronic benefit delivery systems beyond the retail vendor environment.

The Operating Rules and TIG also include specific requirements and technical information on CVB transactions, to include split tender. Split tender is defined as purchasing a single WIC food item with two or more tender types. For example, when WIC participants purchase fruits and vegetables using their CVB, they are allowed to pay from their own funds using other tender types (e.g. SNAP benefits, credit card or cash) if the CVB balance is insufficient. This type of transaction at the register can become quite complex and the retail vendor must ensure the correct purchase information is correctly applied to each tender type. Electronic cash registers can support a split tender purchase but functionality to support this for smart cards is limited at the present time. The WIC EBT Operating Rules address what is allowed for split tender and the TIG provides additional technical guidance.

The Operating Rules and TIG also specify what data is required for the purchase receipt. This is important because WIC benefit prescriptions are time-limited; they are available for a 30 day period and then expire. Purchase receipts contain the date when the electronic benefit will expire so the WIC shopper will know how much time they have to purchase the remaining foods on their electronic benefit. These types of standards are very important to retail vendors and their system developers because they are able to program their software to the TIG requirements once for use in any State agency where they are authorized, thereby eliminating the need for separate software development for each State agency WIC EBT implementation.

WIC vendor requirements are also defined in the Operating Rules and TIG. For example, a participant's EBT card must be presented at the time of sale to be accepted by the WIC authorized vendor as a fraud prevention requirement. The Operating Rules also require the vendor to support a manually key-entered card number if a magnetic stripe EBT card is presented for payment to the checkout clerk. This key-entry capability is a back-up procedure that enables the purchase to occur if the card is damaged or unreadable for some reason. Currently, a key-entered card number will not work for smart cards because the card chip must be physically in contact with the card reader in order to read the card balance before the rest of the purchase can be completed. Should contactless smart cards become prevalent in the United States payment systems, the Operating Rules and TIG may need to be amended. Future updates to the Operating Rules and/or TIG may include details on standard messages that must be sent between a retail system card reader and a smart card. FNS expects that this will be necessary to ensure that new card and card reader technologies remain compatible with WIC requirements. Technical security requirements may also be addressed in future standardization efforts.

After thorough examination, FNS has determined that because the WIC EBT Operating Rules and TIG will be evolving documents, the actual contents of these documents will not be promulgated. Rather, FNS believes that to ensure the Operating Rules and TIG remain viable, current, and accurate, we must remain flexible in our ability to address changes and updates as they are needed. As such, the Operating Rules and TIG will be maintained in a manner similar to how the Quest EBT Operating Rules are maintained in the SNAP EBT environment. Unlike SNAP EBT, however, FNS has taken on the WIC EBT document maintenance responsibility, at least initially, because some State agencies expressed concern that they would have insufficient input into the Operating Rules and TIG if they are maintained by an industry organization.

The authority to maintain and update these standards and rules outside of the regulations is granted under § 246.3(b) of current WIC Program regulations, which state that State agencies must administer the Program in accordance with the requirements set forth in FNS guidelines and instructions. Therefore, FNS has the authority to require State agencies to comply with program guidelines such as these Operating Rules, the TIG and other standards established for the implementation of EBT. As a result, FNS will maintain them as required guidance rather than include them in current regulations.

FNS intends to treat the Operating Rules and TIG as required guidance that will be, at a minimum, updated annually. FNS has established a maintenance process that allows all stakeholders the opportunity to submit change requests necessary to clarify, change or add to the rules that are prompted by implementation activity. This process, consistent with how credit and debit network operating rules are updated, permits stakeholders to submit a change request to FNS for consideration. Once received, reviewed and analyzed for potential impact, the change request will be published on a Web site for comment. Additionally, an opportunity to discuss the proposed changes will be provided and a final version of the change request will be published for a minimum 30 day time period. Once this comment period is completed, a schedule for implementation will be identified in the final change request. Updates will be issued as technical bulletins and then incorporated into the annual update for each document. As some change requests may require more extensive upgrades, the schedule for implementation will vary accordingly. A copy of the Operating Rules and Technical Implementation Guide is available on the FNS web site at: *http://www.fns.usda.gov/wic/EBT/operatingrules-implemguide.htm.*

Retail Vendor Certification Procedures for 'WIC EBT Capability.' As discussed previously in the section on statewide cost sharing, FNS plans to establish procedures and guidance for the certification of retail vendor electronic cash registers and associated payment devices, to include the development of common test scripts and testing criteria. These standardized processes will assist State agencies when seeking assurances from a retail vendor that applies to become a WIC authorized vendor that their electronic cash register system meets the criteria for being 'EBT capable'. These standardized processes will also help to assure that retail vendors are being consistently treated nationwide. Under the HHFKA at Section 17(h)(12)(E)(iv) and reflected in the proposed regulation at § 246.12(aa)(4)(ii), once a State agency is operating WIC EBT statewide, the State agency must require that a retail vendor applicant demonstrate it is WIC 'EBT capable' prior to the State agency authorizing the vendor to participate in the Program, unless the State agency determines that the vendor is necessary for participant access.

To facilitate standardized processes and assist State agencies when seeking assurances that authorized vendors meet the criteria for being 'EBT capable,' FNS intends to provide guidance that would require retail vendors to demonstrate their capability to accept EBT benefits by: (1) Using an abbreviated testing and certification process if the retail vendor is using a pre-certified system that is

already in operation in other EBT State agencies; or (2) using an extensive certification process if the retail vendor is using a new system or has made substantial customization changes to a pre-certified system to meet specific business requirements. The retailer would bear all expenses and responsibility to ensure the system is certified by the State agency. The retailer would also be expected to work with the State agency to determine how they would be required to demonstrate their EBT solution is capable to accept EBT benefits.

FNS is interested in ensuring that integrated cash register systems and other system components complete WIC purchases accurately and result in proper payment of WIC funds. WIC participants should be protected from errors in payment software that incorrectly deduct the wrong quantities of benefits from their WIC EBT food balances. Likewise, State agencies have a fiduciary responsibility to ensure that payments made to WIC retail vendors are accurate and do not result in a liability for paying for benefits that were not authorized to be purchased by a WIC card holder. Therefore, improving the current certification process should be a collaborative effort among WIC EBT stakeholders to ensure all affected entities are involved in defining a new process for retailer certification.

As we have approached other technical standards and operating rules related to various aspects of EBT implementation, we will ultimately include retailer certification standards and processes in the Operating Rules and TIG, as appropriate, after consultation and collaboration with WIC EBT stakeholders. Therefore, the discussion included in this preamble is for information purposes only. FNS welcomes comments in this area, particularly from State agencies, EBT processors, and retail vendors, as this will help to inform us on how we might approach retail certifications in the future.

Universal Interface Standard. FNS is currently working with State agencies and industry to develop a WIC Universal MIS–EBT interface document, which will define how data is exchanged between the two systems to support WIC EBT and to recommend where EBT-related data should be housed/maintained. All WIC State agencies use and maintain an MIS certification system that is used to enroll and certify WIC participants and perform other necessary functions related to WIC Program operations. Once a WIC participant is certified, the MIS calculates the food prescription that is written to a WIC EBT smart card or recorded in the online EBT account. The Universal Interface is designed to standardize the data and functions each system must support to operate a WIC EBT system. Some of the Universal Interface functions include setting up participant demographics, issuing a WIC electronic benefit prescription and exchanging data related to benefit updates and EBT redemption in files.

The Universal Interface will ultimately help reduce the effort and cost of EBT implementations by allowing the various MIS systems to ''connect to'' the various EBT systems in a common or standardized way. MIS systems are typically transferred from state to state, and if the EBT services are procured outside the state, the Universal Interface will help reduce the effort and cost to implement EBT in multiple State agencies and enables an 'even playing field' whenever a State agency contract for EBT service is re-procured. This type of standardization opens up competition and reduces the cost for conversion to different MIS and EBT providers.

Unlike the TIG, which applies to systems outside the State agency MIS, the Universal Interface standard governs the interaction between a state MIS and an EBT system. The Universal Interface specifies how a participant's information and electronic benefits will be sent automatically from a clinic computer to the EBT host system. It also involves exchanges of information on authorized WIC vendors, to include data on retail vendors that is necessary to permit the EBT system to approve any purchases made at a retail vendor's location. Another example is the exchange of data related to the specific cost containment peer group to which a newly authorized WIC retail vendor is assigned. The EBT host system tracks this information and edits prices submitted against the peer group price provided by the State agency.

Other Standards and Requirements. As mentioned previously, other standards may be necessary over time, and FNS must be able to establish these standards and/or incorporate these changes into the existing technical standards and guidelines. WIC State agencies must also accommodate and implement changes in the technical standards, operating rules or other established guidelines. One example of this is the announcement by the VISA card network to introduce smart cards into the U.S. payment system, which may include contactless options that could be on a smart phone. WIC may need to put forth technical standards in order to allow similar contactless acceptance. Other examples of standards that may need to be addressed in the future include system security standards for Personal Identification Numbers (PINs), as well as other security aspects of an EBT system. Section 246.12(bb)(1)(ii) of the proposed regulations would require compliance to such standards established and approved by the Secretary that relate to WIC EBT.

Transitioning from a paper-based food instrument system to an EBT system offers an opportunity for enhanced customer service to WIC participants. As such, this proposed rule would require at § 246.12(bb)(2) a State agency to replace participant benefits within five business days following notice by the household. The State agency would be required, at a minimum, to replace benefits one time in a three-month benefit issuance period. The replacement process would enable the remaining balances on an account to be temporarily put on hold until the benefits could be transferred to a new account. Currently there is no regulatory requirement for the replacement of WIC benefits reported lost or stolen, but rather is a State agency option. At the time of this writing, all WIC EBT State agencies have opted to replace EBT benefits reported lost or stolen, with the maximum wait time of five business days. Online EBT technology offers real-time participant benefit data, affording the opportunity for benefits to be replaced immediately. Since participant benefit data is located directly on the smart card in the offline environment, more time must be provided to allow for store purchase data to be settled in order to receive an accurate balance of remaining benefits. To date, the maximum timeframe required for electronic benefit replacement by an EBT State agency is five business days; therefore, current EBT business practice is congruent with this proposal.

To leverage additional opportunities to enhance customer service for WIC participants, § 246.12(bb)(3) of this proposed rule would also require a State agency to provide a toll-free, 24-hour hotline number for EBT cardholder assistance. Customer service can be provided via an automated system and/or live representatives and internet account access. This hotline number could provide a variety of services such as enabling participants to report a lost or stolen card through a single, toll-free phone call at any time, and request a replacement. At this time of writing, only a limited number of EBT State agencies provide this service to WIC participants, none of which are offline EBT State agencies. However, the Wyoming WIC Program had provided

24-hour participant support via contracted services in their offline system environment in the past, but determined the cost to provide such a service exceeded the benefits and ultimately terminated this service in 2008.

While FNS supports the potential for enhanced business practices and customer service that EBT may provide, we also recognize the potential affordability impact and management of resources with such proposed requirements for all EBT State agencies and, therefore, welcome and encourage reader comment.

7. National Universal Product Code (NUPC) Database

Each WIC State agency is required to authorize eligible foods and develop a list of those food items that are available to WIC participants to purchase. In a WIC EBT environment, authorized vendors are provided an electronic file containing the State agency's current list of authorized foods. This list of individual products is commonly referred to as the WIC State agency's APL. The APL includes the UPC or PLU code for each approved item. As products are scanned at the checkout lane, the UPC or PLU is matched to the state specific APL. Food items that match the APL, and which are presented in quantities less than or equal to the remaining benefit balance associated with the participant's WIC EBT card, are approved for purchase. Unmatched items, or items in excess of the available account balance, are not allowed for purchase with WIC benefits.

The NUPC database will serve as a national central repository for information about WIC authorized foods from all WIC State agencies operating an EBT system, and will provide State agencies with the ability to share information and eliminate duplication of effort when creating or maintaining a list of individual products which are eligible for purchase using WIC benefits.

Congress first noted the importance of creating the NUPC database with the passage of the Child Nutrition and WIC Reauthorization Act in 2004. This legislation directed the Secretary of Agriculture to: (1) establish a national Universal Product Code database for use by all State agencies; and (2) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database. It was on this basis that FNS initially developed a database and user interface which allows State agencies to store and retrieve specific information on foods found to be eligible for purchase using WIC benefits. The HHFKA reinforced Congress' original intent, stating that the Secretary shall establish a NUPC database to be used by all State agencies, and that it be made available by December 10, 2012.

While the provisional requirement to establish a NUPC database has been met and the current version of the NUPC database is available for use in both the test and production environments, FNS recognizes that the current version of the NUPC database is difficult to use, requires a significant time commitment to add products, and does not capture data in a consistent format. As a result, several WIC State agencies have developed UPC databases for individual State agency use. These individual UPC databases are not interconnected and do not serve as a central repository of information which can be freely shared between all WIC State agencies. FNS is, therefore, moving forward with several enhancements to the NUPC database which will: simplify the data input process; expand the database to include nutrition information and ingredients for each product; and provide for an independent third party to assume responsibility for populating the NUPC database while ensuring that the information housed in the database is accurate, complete, and consistent.

Several national and regional grocery chains have requested a single point of connection for WIC EBT file transfers to reduce the number of connections each retailer must establish or maintain while operating EBT systems. In response to that request, FNS intends to develop a centralized file transfer capability, or ''clearinghouse,'' to facilitate the transfer of APL's between State agencies and their authorized vendors. In support of this objective, FNS proposes at § 246.12(cc) to require WIC State agencies to submit an electronic copy of their current APL prior to the APL becoming effective or making it available to the State agency's authorized vendors. The current APL will be used for subsequent distribution to authorized vendors via the ''clearinghouse.'' A national food category/subcategory table standard, which plays a critical role in EBT food package issuance and redemption processes, has been established but is currently not required for use. While a national standard format for a category/subcategory table and APL file are both important and desirable as WIC EBT expands, FNS recognizes that mandating such a requirement may create a burden on State agencies. As such, FNS welcomes reader comment on the potential barriers, obstacles, and benefits State agencies would incur if conformity of a national standard APL was required by FNS. FNS also invites reader comment on how conformity could be effectively instituted.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be ''Not Significant'' under section 3(f) of Executive Order 12866; therefore, no OMB review is required.

Procedural Matters

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Pursuant to that review, Administrator of the Food and Nutrition Service, Audrey Rowe, has determined that this rule will not have a significant economic impact on a substantial number of small entities. State and local agencies and WIC recipients will be most affected by the rule, and WIC authorized vendors and the food industry may be indirectly affected. The proposed rule would provide State and local agencies with increased flexibility in food delivery services for the Program. Vendors and the food industry would realize increased sales of some foods and decreases in other foods, with an overall neutral effect on sales nationally.

Public Law 104–4, Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally

requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

WIC is listed in the Catalog of Federal Domestic Assistance under No. 10.557. For the reasons set forth in the final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the DATES paragraph of the preamble of the proposed rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

In WIC, the administrative procedures are as follows: (1) State and local agencies, farmers, farmers' markets, and roadside stands—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) Applicants and participants—State agency hearing procedures pursuant to 7 CFR 246.18; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.16, and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis,'' and 1512–1, ''Regulatory Decision Making Requirements.'' After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits in the WIC Program. Federal WIC regulations specifically prohibit State agencies that administer the WIC Program, and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (see 7 CFR 246.8 for the nondiscrimination policy in the WIC Program). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the WIC Program regulations set forth at § 246.8.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to host periodic collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country. The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains no new information collection requirements that are subject to OMB approval. Section 246.12(y) would require each State agency to have an active EBT project by October 1, 2015. The Advance Planning Document (APD) is used to initiate the EBT planning process. Under the existing collection (0584–0043), it is estimated that 15 APDs would be submitted each year. Currently, only 32 State agencies have not begun any EBT activity. As a result, the current estimate of 15 submissions per year is unchanged. The existing recordkeeping and reporting requirements, which were approved under OMB control number 0584–0043, will not change as a result of this rule.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purpose. State Plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State agency to FNS. Also, State agencies may provide WIC Program information, as well as their financial reports, to FNS electronically.

List of Subjects in 7 CFR Part 246

WIC, Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, Women.

Accordingly, for reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 246.2:

■ a. Amend the definition of ''Cash-value voucher'' by adding a second sentence, ''Cash-value voucher is also known as cash-value benefit (CVB) in an EBT environment'';

■ b. Add the definition of ''Electronic Benefit Transfer (EBT)'' in alphabetical order; and

■ c. Revise the definition of ''Participant Violation''.

The addition and revision read as follows:

§ 246.2 Definitions.

* * * * *

Electronic Benefit Transfer (EBT) means a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to program benefits.

* * * * *

Participant violation means any intentional action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include, but are not limited to, intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; selling or offering to sell cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange cash-value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

* * * * *

§ 246.4 [Amended]

■ 3. In § 246.4, amend paragraph (a)(1) by removing the period at the end of the paragraph and adding in its place a comma followed by the words ''to include EBT and/or EBT implementation.''.

■ 4. § 246.12 is amended as follows:

■ a. Paragraph (a) introductory text is amended by removing the ''s'' from the word ''benefits'' and by adding a new sentence at the end of the paragraph.

■ b. Paragraph (b) by removing the word ''three'' and adding in its place ''four''; and by removing the text ''or direct distribution.'' at the end of the first sentence and replacing it with ''direct distribution, or EBT.''

■ c. Remove paragraph (g)(5).

■ d. Redesignate paragraphs (g)(6) through (g)(11) as (g)(5) through (g)(10), respectively.

■ e. Add new paragraphs (h)(3)(xxvi) through (h)(3)(xxx).

■ f. Add new paragraphs (w) through (cc).

The additions read as follows:

§ 246.12 Food delivery systems.

(a) * * * By October 1, 2020, each State agency shall implement an EBT system statewide, unless FNS grants an exemption under paragraph (w)(2) of this section.

* * * * *

(h) * * *

(3) * * *

(xxvi) *EBT minimum lane coverage.* Point of Sale (POS) terminals used to support the WIC Program shall be deployed in accordance with the minimum lane coverage provisions of paragraph (z)(2) of this section. The State agency may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in paragraphs (z)(2)(i) and (z)(2)(ii) of this section.

(xxvii) *EBT third-party processing costs and fees.* The vendor shall not charge to the State agency any third-party processing costs and fees incurred by the vendor from EBT multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the EBT system of the State shall be borne by the vendor.

(xxviii) *EBT interchange fees.* The vendor shall not charge interchange fees related to WIC EBT to the State agency.

(xxix) *EBT operational maintenance and operational costs.* The State agency shall not pay ongoing maintenance, processing fees or operational costs for vendor systems and equipment used to support WIC EBT after the State agency has implemented WIC EBT statewide, unless the State agency determines that the vendor is needed for participant access.

(xxx) *Compliance with EBT operating rules, standards and technical requirements.* The vendor must comply with the Operating rules, standards and technical requirements established by the State agency.

* * * * *

(w) *EBT food delivery systems* (1) *General.* EBT systems are food delivery systems in which participants, parents or caretakers of infant and child participants, and proxies obtain authorized supplemental foods by using a card or other access device approved by the Secretary that permits electronic access to program benefits. All State agencies shall implement EBT statewide in accordance with paragraph (a) of this section.

(2) *EBT exemptions.* The Secretary may grant an exemption to the October 1, 2020 statewide implementation requirement. To be eligible for an exemption, a State agency shall demonstrate to the satisfaction of the Secretary one or more of the following:

(i) There are unusual technological barriers to implementation;

(ii) Operational costs are not affordable within the nutrition services and administration grant of the State agency; or

(iii) It is in the best interest of the program to grant the exemption.

(3) *Implementation date.* A State agency requesting an exemption under paragraph (w)(2) of this section shall specify a date by which it anticipates statewide implementation. If a State agency is granted an exemption, such exemption would remain in effect until the State agency no longer meets the conditions on which the exemption was based, until the Secretary revokes the exemption, or for three years, whichever occurs first.

(x) *EBT food delivery systems*: *Electronic benefit requirements*—(1) *General.* State agencies using EBT food delivery systems shall issue an electronic benefit that complies with the requirements of paragraph (x)(2) of this section.

(2) *Electronic benefits.* Each electronic benefit must contain the following information:

(i) *Authorized supplemental foods.* The supplemental foods authorized by food category, subcategory, and benefit quantity, to include the CVB;

(ii) *First date of use.* The first date of use on which the electronic benefit may be used to obtain authorized supplemental foods;

(iii) *Last date of use.* The last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first month of issuance, when it may be the end of the month or cycle for which the electronic benefit is valid; and

(iv) *Benefit issuance identifier.* A unique and sequential number. This number enables the identification of each benefit change (addition, subtraction or update) made to the participant account.

(3) *Vendor identification.* The State agency shall ensure that each EBT purchase submitted for electronic payment is matched to an authorized vendor or farmer prior to authorizing payment. Each vendor operated by a

single business entity must be identified separately.

(y) *EBT food delivery systems: EBT systems management and reporting.* (1) The State agency shall follow FNS Advance Planning Document (APD) requirements and submit Planning and Implementation APD's, and appropriate updates, for FNS approval for planning, development and implementation of initial and subsequent EBT systems.

(2) If a State agency plans to incorporate additional programs in the EBT system of the State, the State agency shall consult with State agency officials responsible for administering the programs prior to submitting the planning APD (PAPD) document, and include the outcome of those discussions in the PAPD submission to FNS for approval.

(3) Each State agency shall have an active EBT project by October 1, 2015. Active EBT project is defined as a formal process of planning, design, pilot testing, or statewide implementation of WIC EBT.

(4) Annually as part of the State plan, the State agency shall submit EBT project status reports. At a minimum, the annual status report shall contain:

(i) Until operating EBT statewide, an outline of the EBT implementation goals and objectives as part of the goals and objectives in 246.4(a)(1) to demonstrate the State agency's progress toward statewide EBT implementation; and

(ii) If operating EBT statewide, any information on future EBT system changes and procurement updates that would affect present operations; and

(iii) Such other information the Secretary may require.

(5) The State agency shall be responsible for the coordination and management of its EBT system.

(z) *EBT food delivery systems: Vendor requirements*—(1) *General.* State agencies using EBT food delivery systems shall comply with the vendor requirements in paragraphs (g) through (l) of this section. In addition, State agencies shall comply with the following requirements of this section specific to EBT.

(2) *Minimum lane coverage.* FNS encourages WIC EBT transactions to be integrated into the authorized vendor's electronic cash register system to promote efficiencies and improve WIC benefit delivery. If this is not possible, the State agency shall provide Point of Sale (POS) terminals solely used to support the WIC Program. All POS terminals, whether multi-functional or used solely to support the WIC Program, shall be deployed as follows:

(i) *Superstores and supermarkets.* One POS terminal for every $11,000 in monthly WIC redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed in monthly WIC redemption threshold increments as follows: one terminal for $0 to $11,000; two terminals for $11,001 to $22,000; three terminals for $22,001 to $33,000; and four terminals for $33,001 and above. A State agency may utilize an alternative installation formula with FNS approval. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;

(ii) *All other vendors.* One POS terminal for every $8,000 in monthly redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed in monthly WIC redemption thresholds as follows: one terminal for $0 to $8,000; two terminals for $8,001 to $16,000; three terminals for $16,001 to $24,000; and four terminals for $24,001 and above. A State agency may utilize an alternative installation formula with FNS approval;

(iii) The State agency shall determine the number of appropriate devices for authorized farmers and farmers markets;

(iv) For newly authorized WIC vendors deemed necessary for participant access by the State agency, the vendor shall be provided one terminal unless the State agency determines that other factors in that location warrant additional terminals;

(v) Any authorized vendor who has been equipped with a terminal by the State agency may submit evidence that additional terminals are necessary after the initial POS terminals are installed;

(vi) The State agency may provide authorized vendors with additional terminals above the minimum number required by this paragraph in order to permit WIC participants to obtain a shopping list or benefit balance, as long as the number of terminals provided does not exceed the number of lanes in the vendor location; and

(vii) The State agency may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in paragraph (z)(2)(i) through (ii) of this paragraph.

(3) *Payment to vendors, farmers and home food delivery contractors.* The State agency shall ensure that vendors, farmers and home food delivery contractors are paid promptly. Payment must be made in accordance with the established Operating Rules and technical requirements after the vendor, farmer, or home delivery contractor has submitted a valid electronic claim for payment.

(aa) *EBT food delivery systems: Imposition of costs on vendors.* (1) *Cost prohibition.* Except as otherwise provided in this section, a State agency shall not impose the costs of any equipment or system required for EBT on any authorized vendor in order to transact EBT if the vendor equipment or system is used solely for the WIC Program.

(2) *Cost sharing.* If WIC program equipment is not solely dedicated to transacting EBT for the WIC program, State agencies shall establish cost sharing criteria with their authorized WIC vendors for costs associated with such equipment in accordance with established criteria as set forth in 2 CFR part 225.

(3) *Fees.* (i) *Third-party processor costs and fees.* A State agency shall not pay third-party processing costs and fees for vendors that elect to accept EBT using multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the EBT system of the State shall be borne by the vendor.

(ii) *Interchange fees.* Interchange fees shall not apply to WIC EBT.

(4) *Statewide operations.* After completion of statewide implementation of an EBT system:

(i) A State agency shall not pay ongoing maintenance, processing fees or operational costs for vendor systems and equipment used to support EBT, unless the State agency determines that the vendor is needed for participant access;

(ii) Any vendor applicant in the State that applies for authorization to become an authorized vendor shall be required to demonstrate the capability to accept WIC benefits electronically prior to authorization in accordance with State agency requirements, unless the State agency determines that the vendor is necessary for participant access.

(bb) *EBT food delivery systems: Technical standards and requirements.* (1) Each State agency, contractor, and authorized vendor participating in the program shall follow and demonstrate compliance with:

(i) Operating rules, standards and technical requirements as established by the Secretary; and

(ii) Other industry standards identified by the Secretary.

(2) A State agency shall establish policy permitting the replacement of participant benefits within five business days following notice by the household to the State agency, at least one time in a consecutive three-month period.

(3) A State agency shall provide a toll free 24 hour hotline number for EBT cardholder assistance.

(cc) *National universal product codes (UPC) database.* The national UPC database is to be used by all State agencies operating a WIC EBT food delivery system. Each WIC State agency shall submit a copy of its current authorized product list (APL) for inclusion in the national UPC database prior to the APL becoming effective or making it available to its authorized vendors.

Dated: February 4, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–04216 Filed 2–27–13; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–STD–0006]

RIN 1904–AC43

Energy Conservation Program: Availability of the Preliminary Technical Support Document for General Service Fluorescent Lamps and Incandescent Reflector Lamps

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

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on: the product classes that DOE plans to analyze for purposes of amending energy conservation standards for general service fluorescent lamps (GSFLs) and incandescent reflector lamps (IRLs); the analytical framework, models, and tools that DOE is using to evaluate standards for GSFLs and IRLs; the results of preliminary analyses DOE performed for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for GSFLs and IRLs. DOE encourages written comments on these subjects. To inform interested parties and facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available on *regulations.gov,* docket number EERE–2011–BT–STD–0006 at *www.regulations.gov/#!docketDetail;D=EERE–2011–BT–STD–0006.*

DATES: DOE will hold a public meeting on April 9, 2013 from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section IV Public Participation for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice before and after the public meeting, but no later than April 15, 2013. See section IV Public Participation for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to the Public Participation section near the end of this notice.

Any comments submitted must identify the notice of public meeting for Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps, and provide docket number EE–2011–BT–STD–0006 and/or regulatory information number (RIN) 1904–AC43. Comments may be submitted using any of the following methods:

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

2. *Email:* GSFL–IRL_2011–STD–0006@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Christine_J._Kymn@omb.eop.gov.*

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket for this notice can be found on the regulations.gov site, docket number EERE–2011–BT–STD–0006 at *www.regulations.gov/#!docketDetail;D=EERE–2011–BT–STD–0006.* The regulations.gov web page contains instructions on how to access all documents, including public comments, in the docket. See section IV for further information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *brenda.edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1604 Email: *lucy.debutts@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov.*

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I. Statutory Authority

Title III of the Energy Policy and Conservation Act (EPCA; 42 U.S.C. 6291 *et seq.*) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which includes the fluorescent and incandescent reflector lamps (IRLs) that are the focus of this preliminary analysis.[1] [2] In particular, EPCA establishes energy conservation standards for certain classes of general service fluorescent lamps (GSFLs) and IRLs, and requires that the U.S. Department of Energy (DOE) (1) conduct two rulemaking cycles to determine whether these standards should be amended; and (2) determine whether the standards in effect for GSFLs should be amended to apply to additional GSFLs. (42 U.S.C. 6291(1), 6295(i)(1) and (3)-(5)) On July 14, 2009, DOE published a final rule in the **Federal Register**, which completed the first rulemaking cycle to amend energy conservation standards for GSFLs and IRLs (hereafter the ''2009 Lamps Rule''). 74 FR 34080. This rulemaking constitutes DOE's second cycle of review to determine whether the standards in effect for GSFLs and IRLs should be amended. In this rulemaking, DOE will also consider whether the standards should be applicable to additional GSFLs.

DOE must design any energy conservation standards for GSFLs and IRLs to (1) achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)) To determine whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary [of Energy] considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

DOE also adheres to additional statutory requirements of general applicability for prescribing new or amended standards set forth in other relevant sections of EPCA.

II. Rulemakings for General Service Fluorescent Lamps and Incandescent Reflector Lamps

A. Background

As mentioned in the previous section, EPCA, as amended, established energy conservation standards for certain classes of GSFLs and IRLs, and required DOE to conduct two rulemaking cycles to determine whether these standards should be amended. (42 U.S.C. 6291(1), 6295(i)(1) and (3)–(4)) EPCA also authorized DOE to adopt standards for additional GSFLs if such standards were warranted. (42 U.S.C. 6295(i)(5)).

DOE completed the first cycle of amendments by publishing a final rule in the **Federal Register** in July 2009. 74 FR 34080 (July 14, 2009). In the 2009 Lamps Rule, DOE amended existing GSFL and IRL energy conservation standards and adopted standards for additional GSFLs. DOE also amended the regulatory definitions of ''colored fluorescent lamp'' and ''rated wattage'' and adopted test procedures applicable to the newly covered GSFLs.[3]

To initiate the second rulemaking cycle to consider amended energy conservation standards for GSFLs and IRLs, on September 14, 2011, DOE published a notice announcing the availability of the framework document, ''Energy Conservation Standards Rulemaking Framework Document for General Service Fluorescent Lamps and Incandescent Reflector Lamps,'' and a public meeting to discuss the proposed analytical framework for the rulemaking. 76 FR 56678. In the framework document, which DOE also posted on its Web site, DOE described the procedural and analytical approaches DOE anticipated using to evaluate the establishment of energy conservation standards for GSFLs and IRLs.

DOE held the public meeting for the framework document on October 4, 2011,[4] to describe the various rulemaking analyses DOE would conduct, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA); the methods for conducting them; and the relationship among the various analyses. Manufacturers, trade associations, and environmental advocates attended the meeting. The participants discussed multiple issues, including unknown impacts of the 2009 Lamps Rule, technology shifts, and rare earth phosphors.

DOE has also taken steps to consider standards for certain reflector (R), elliptical reflector (ER), and bulged reflector (BR) IRLs. Additional background can be found at 75 FR 23191 (May 3, 2010). DOE has suspended these rulemaking activities, however, as a result of section 315 of Public Law 112–74 (Dec. 23, 2011), which prohibits DOE from using appropriated funds to implement or enforce standards for these IRLs. DOE does not examine any IRLs covered by the prohibition (which has currently been extended through March 27, 2013), including bulged parabolic reflector IRLs, in this preliminary analysis.

B. Current Rulemaking Process

In this preliminary analysis, DOE considers whether and at what level(s) to promulgate energy conservation standards for GSFLs and IRLs. Comments received since publication of

[1] Part B was re-designated Part A on codification in the U.S. Code for editorial reasons.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[3] Information regarding the 2009 Lamps Rule can be found on DOE's Building and Technologies Web pages for IRLs (*http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/58*) and GSFLs (*http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/70*).

[4] The framework document and public meeting information are available at regulations.gov, docket number EERE–2011–BT–STD–0006 at *www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0006*.

the framework document have helped DOE identify and resolve issues involved in the preliminary analyses. Chapter 2 of the preliminary technical support document (TSD) summarizes and addresses the comments DOE received.

The process for developing energy conservation standards involves input from the public. DOE considers the participation of interested parties to be a very important part of the rulemaking process. Accordingly, DOE encourages the participation of all interested parties during the comment period provided at each stage of the rulemaking.

In conducting energy conservation standards rulemakings, DOE involves interested parties through various means. This standards rulemaking process for GSFLs and IRLs involves four public notices, published in the **Federal Register**, and three public meetings (including the public notice and meeting associated with the framework document previously mentioned).

The preliminary analysis allows for public comment on the data, models, and tools that DOE expects to use in the rulemaking. These data, as discussed in section III.A, include product classes and candidate standard levels (CSLs), which span the range of efficacies from baseline lamps [5] to the most efficacious technology. DOE requests comment and will hold a public meeting and webinar related to the preliminary analyses on the day specified in the **DATES** section.

After the preliminary analysis public meeting, DOE will determine whether to publish a notice of proposed rulemaking (NOPR). Any NOPR would present discussion of the comments received on the preliminary analysis, along with DOE's analysis of the impacts of potential standards on consumers, manufacturers, and the nation; DOE's weighting of these impacts; and the proposed standard levels, for public comment.

III. Summary of the Analyses

DOE conducted in-depth technical analyses in the following areas for GSFLs and IRLs currently under consideration: (1) Engineering, (2) energy-use characterization, (3) product price determination, (4) LCC and PBP, and (5) national impact. The preliminary TSD presents the methodology and results of each analysis. The analyses are described in more detail in the following sections.

DOE conducted several other analyses that either support the five major analyses or are preliminary analyses that will be expanded in the NOPR. These include the market and technology assessment; the screening analysis, which contributes to the engineering analysis; and the shipments analysis, which contributes to the NIA. DOE has also begun work on the manufacturer impact analysis and identified the methods to be used for the LCC subgroup analysis, the emissions analysis, the employment analysis, the regulatory impact analysis, and the utility impact analysis.

A. Engineering Analysis

For this GSFL and IRL rulemaking, DOE derives efficacy levels in the engineering analysis and lamp end-user prices in the product price determination (see section III.C). DOE estimates the end-user price of GSFLs and IRLs directly because it is difficult to disassemble and reverse-engineer the lamps. The outputs of the engineering analysis and product price determination are used to develop cost-efficiency relationships.

The engineering analysis focuses on selecting commercially available lamps that incorporate design options that improve efficacy. The engineering analysis identifies both the highest efficacy level that is technologically feasible within each product class and the representative baseline models, which serve as reference points against which DOE can measure changes resulting from potential energy conservation standards. After identifying more efficacious substitutes for each baseline model, DOE develops CSLs. Chapters 2 and 5 of the preliminary TSD discuss the engineering analysis, and chapters 2 and 7 and appendix 7A of the preliminary TSD discuss the product price determination.

B. Energy-Use Analysis

The purpose of the energy-use analysis is to estimate the energy usage for the baseline and higher efficacy lamps considered in this rulemaking. This analysis, which is meant to represent typical energy usage in the field, is an input to both the LCC and PBP analyses and the NIA. The energy-use analysis enables DOE to determine the LCC and the PBP of more efficacious lamps in relation to the baseline lamp. Chapters 2 and 6 of the preliminary TSD provide detail on the energy-use characterization.

C. Product Price Determination

As mentioned in section III.A, DOE often develops cost-efficiency relationships in the engineering analysis. However, for this rulemaking, DOE estimated the end-user price of GSFLs and IRLs directly. DOE selected this methodology because it is difficult to reverse-engineer GSFLs and IRLs, which are not easily disassembled. Chapters 2 and 7 of the preliminary TSD provide detail on the estimation of end-user prices.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual customers. The LCC of a product is the cost it incurs over its lifetime, taking into account both purchase price and operating expenses. The PBP represents the time it takes to recover the additional installed cost of the more efficacious products through annual operating-cost savings. DOE analyzes the net effect on consumers by calculating the LCC and PBP using the engineering performance data (section III.A), the energy-use analysis data (section III.B), and the product price determination (section III.C). Chapters 2 and 8 of the preliminary TSD provide detail on the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from amended standards at specific CSLs. DOE calculates NES and NPV for each CSL for GSFLs and IRLs as the difference between a base case projection (without new standards) and the standards-case projection (with standards). DOE calculates national energy use for each year beginning with the expected compliance date of the standards, estimating national electricity use for the base case and each potential standard level analyzed. To calculate energy use, product stock in a given year is multiplied by annual energy use. DOE calculates the national NPV of the consumer savings resulting from energy conservation standards in conjunction with the NES. It calculates annual energy expenditures from annual energy use by incorporating projected energy prices and installed stock in each year. DOE calculates annual product expenditures by multiplying the price per lamp by the projected shipments. The difference between a base case and a standards-case scenario gives the national energy bill savings and

[5] DOE selected baseline lamps for each representative product class. Generally, a baseline lamp is one that represents the most common, least efficacious lamp sold within a product class.

increased product expenditure in dollars. Chapters 2 and 10 of the preliminary TSD provide more detail on the NIA.

IV. Public Participation

DOE consulted with interested parties on all of the analyses and invites further input on these topics. The preliminary analytical results are subject to revision following review and input from the public. A revised TSD will be made available upon issuance of a NOPR. Any final rule will contain the final analysis results and be accompanied by a final rule TSD.

At the preliminary analysis public meeting, the Department will make a presentation, invite discussion on the rulemaking process as it applies to the covered products, and solicit comments, data, and information from participants and other interested parties. Participants can also attend the public meeting via webinar. Registration information, participant instructions, and information about the capabilities available to webinar participants will be available through the following Web page: *http://www1.eere.energy.gov/buildings/appliance_standards/public_meetings_and_comment_deadline.html*. Participants are responsible for ensuring their computer systems are compatible with the webinar software. The Department encourages those who wish to participate in the public meeting to obtain the preliminary TSD and to be prepared to discuss its contents. However, public meeting participants need not limit their comments to the topics identified in the TSD. DOE is also interested in receiving information on other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit comments and information in writing by the day listed in the **DATES** section.

The public meeting and associated webinar will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs, prices, market shares, or other commercial matters regulated by U.S. antitrust laws.

After considering all comments and additional information it receives from interested parties or through further analyses, DOE will consider whether to propose standard levels in a NOPR. Any NOPR would be published in the **Federal Register** and include proposed energy conservation standards for the products covered by the rulemaking. Members of the public will again have an opportunity to submit written and oral comments on any proposed standards.

Issued in Washington, DC, on February 20, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–04711 Filed 2–27–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0043]

RIN 1904–AC36

Energy Conservation Program for High-Intensity Discharge Lamps: Public Meeting and Availability of the Interim Technical Support Document

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

ACTION: Notice of public meeting and availability of interim technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the interim analysis it has conducted for purposes of establishing energy conservation standards for high-intensity discharge (HID) lamps. The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate standards for this equipment; the results of interim analyses performed by DOE for this equipment; the potential energy conservation standard levels derived from these analyses that DOE could consider for this equipment; and any other issues relevant to the development of energy conservation standards for HID lamps. In addition, DOE encourages written comments on these subjects. To inform interested parties and facilitate this process, DOE has prepared an agenda, an interim technical support document (TSD), and briefing materials, which are available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/23.*

DATES: DOE will hold a public meeting on April 2, 2013, from 9:00 a.m. to 4:00 p.m., in Washington, DC. Additionally, DOE plans to allow for participation in the public meeting via webinar. DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than April 19, 2013. See section IV, ''Public Participation,'' of this notice of public meeting (NOPM) for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Please report to the visitor's desk to have devices checked before proceeding through security.

Interested parties may submit comments, identified by docket number EERE–2010–BT–STD–0043 and/or Regulation Identifier Number (RIN) 1904–AC36, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HIDLamps-2010–STD–0043@ee.doe.gov.* Include the docket number EERE–2010–BT–STD–0043 and/or RIN 1904–AC36 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Interim Analysis for High-Intensity Discharge Lamps, EERE–2010–BT–STD–0043 and/or RIN 1904–AC36, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, framework documents, public meeting

attendee lists and transcripts, comments, and other supporting documents and materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The rulemaking web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/23*. This web page contains a link to the docket for this notice on the regulations.gov site. The regulations.gov web page contains instructions on how to access all documents, including public comments, in the docket.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document. For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *brenda.edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *high_intensity_discharge_lamps@ee.doe.gov*. Or visit DOE's HID lamps web page at *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/60* for information about any existing standards and test procedures, and the history and impacts of previous DOE regulatory actions, for this category of equipment.

In the Office of the General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov*.

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I. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA; 42 U.S.C. 6291–6317), as amended, established the Energy Conservation Program for Consumer Products other than Automobiles. Title III, Part C established the Energy Conservation Program for Certain Industrial Equipment, which includes the high-intensity discharge (HID) lamps addressed in this interim analysis.[1] While HID lamps are defined under Part B, the requirement for DOE to set standards for HID lamps is set forth in Part C. As a result, DOE has determined that the provisions of Part C apply to HID lamps.

EPCA requires the U.S. Department of Energy (DOE) to prescribe testing requirements for those HID lamps for which DOE makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(a)(1)). EPCA further requires DOE, within 18 months of prescribing any testing requirements for HID lamps, to prescribe energy conservation standards for those lamps. (42 U.S.C. 6317(a)(2)). Any standards would apply to lamps manufactured 36 months after the date the standards rule is published. (42 U.S.C. 6317(a)(3)).

Energy conservation standards adopted by DOE must: (1) achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified; and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)). To determine whether a proposed standard is economically justified, DOE will, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary [of Energy] considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

Additional statutory requirements of general applicability for prescribing new or amended standards are set forth in 42 U.S.C. 6295(o)(1)–(5), 42 U.S.C. 6316(a), and other relevant sections of EPCA.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for HID lamps and the results of interim analyses. Today's document announces the availability of the interim TSD, which details the interim analyses, discusses the comments DOE received from interested parties on the Framework Document, and summarizes the interim results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and interim results.

II. History of Energy Conservation Standards Rulemakings for High-Intensity Discharge Lamps

A. Background

As mentioned in the previous section, EPCA requires DOE to prescribe testing requirements for those HID lamps for which DOE makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(a)(1)). Further, within 18 months of prescribing any test procedures, EPCA requires DOE to prescribe energy conservation standards for those lamps; standards would apply to lamps manufactured 36 months after the date the standards rule is published. (42 U.S.C. 6317(a)(2)–(3)).

DOE published a positive final determination[2] (hereafter the ''final determination'') that standards for certain HID lamps are technologically

[1] For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated Parts A and A–1, respectively.

[2] The final determination is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/60.*

feasible, economically justified, and would result in a significant energy savings. 75 FR 37975 (July 1, 2010). As a result of this determination, DOE is currently conducting a test procedure rulemaking for the specified lamps,[3] as well as conducting this standards rulemaking. On February 28, 2012, DOE published a notice announcing the availability of the framework document, ''Framework Document for High-Intensity Discharge Lamps,'' and a public meeting to discuss the proposed analytical framework for the rulemaking. 77 FR 11785. DOE also posted the framework document on its Web site, in which DOE described the procedural and analytical approaches DOE anticipated using to evaluate the establishment of energy conservation standards for HID lamps.

DOE held the public meeting for the framework document on March 29, 2012,[4] to describe the various rulemaking analyses DOE would conduct, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA); the methods for conducting them; and the relationship among the various analyses. Manufacturers, trade associations, and energy efficiency advocates attended the meeting. The participants discussed multiple issues, including the scope of coverage; the appropriateness of lumen output as an equipment class-setting factor; the metrics of initial and mean lamp efficacy; the technological shift from HID lamps to light-emitting diode (LED) lighting; the necessity of changing ballasts and fixtures when moving to more efficacious HID lamps; the potential for increased testing burden.

B. Current Rulemaking Process

In this interim analysis, DOE considers whether and at what level(s) to promulgate energy conservation standards for certain HID lamps. Comments received since the publication of the framework document have helped DOE identify and resolve issues involved in the interim analyses. The process for developing energy conservation standards involves input from the public. DOE considers the participation of interested parties to be a very important part of the rulemaking process. Accordingly, DOE encourages the participation of all interested parties during the comment period provided at each stage of the rulemaking.

In conducting energy conservation standards rulemakings, DOE involves interested parties through various means. This standards rulemaking process for HID lamps involves four public notices, published in the **Federal Register**, and three public meetings (including the public notice and meeting associated with the framework document previously mentioned).

The interim analysis allows for public comment on the data, models, and tools that DOE expects to use in the rulemaking. These data, as discussed in section III, include equipment classes and candidate standard levels (CSLs), which span the range of efficacies from baseline equipment[5] to the most efficacious technology. DOE requests comment and will hold a public meeting and webinar related to the interim analyses on the day specified in the **DATES** section. After the interim analysis public meeting, DOE will publish a notice of proposed rulemaking (NOPR) presenting a discussion of comments received in response to the framework document and interim analyses, along with DOE's analysis of the effects of potential standards on customers, manufacturers, and the nation; DOE's weighting of these effects; and the proposed standard levels for public comment.

III. Summary of the Analyses

DOE conducted in-depth technical analyses in the following areas for the HID lamps currently under consideration: (1) Engineering, (2) markups to determine equipment price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impact. The interim TSD presents the methodology and results of each of these analyses is available at *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/60.*

DOE also conducted, and has included in the interim TSD, several other analyses that support the major analyses or are interim analyses that will be expanded upon for a NOPR if DOE determines that new energy conservation standards are technologically feasible, economically justified, and would save a significant amount of energy, based on the information presented to the Department. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and NIA. In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in any NOPR.

A. Engineering Analysis

In energy conservation standard rulemakings for other equipment, DOE often develops cost-efficiency relationships in the engineering analysis. However, for this HID lamp rulemaking, DOE derives efficiency levels in the engineering analysis and lamp end-user prices in the equipment price determination. DOE also develops ballast and fixture manufacturer selling prices (MSPs) in the equipment price determination, because a change of ballast and fixture is often required when transitioning to a more efficacious, reduced-wattage lamp. The engineering analysis focuses on selecting commercially available lamps that incorporate design options that improve efficacy. The engineering analysis identifies both the highest efficacy that is technologically feasible within each equipment class and the representative baseline models, which serve as reference points against which DOE can measure changes resulting from potential energy conservation standards. After identifying more efficacious substitutes for each baseline model, DOE developed CSLs. Chapter 2 and 5 of the interim TSD discuss the engineering analysis, and chapter 2 and 6 and appendix 6A of the interim TSD discuss the equipment price determination.

B. Markups To Determine Prices

Because DOE estimated HID lamp end-user prices directly, markups were not needed to relate MSPs to end-user prices for lamps. In its markup analysis, DOE evaluates distribution channels for HID lamps to help develop end-user equipment prices for ballasts and fixtures for the LCC analysis and NIA. Chapters 2 and 7 of the interim TSD provide detail on the estimation of markups.

[3] DOE published a proposed test procedure NOPR on December 15, 2011 (76 FR 77914).

[4] The framework document and public meeting information can be accessed at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/23.*

[5] DOE selected baseline lamps as representative equipment. Generally, a baseline lamp is one that represents the most common, least efficacious lamp sold within an equipment class. DOE selected multiple baseline lamps to ensure consideration of different high-volume lamps and their associated customer economics (*e.g.,* customers of mercury vapor lamp-and-ballast systems incur different costs than customers of metal halide lamp-and-ballast systems).

C. Energy Use Analysis

The energy use analysis provides estimates of the annual energy consumption of HID lamps. The energy use analysis seeks to estimate the range of energy consumption of the equipment that meet each of the efficiency levels considered in a given rulemaking as they are used in the field. DOE uses these values in the LCC and PBP analyses and in the NIA. Chapters 2 and 8 of the interim TSD provide detail on the energy use analysis.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing, operating, and maintaining considered equipment over the course of its lifetime. The LCC analysis compares the LCCs of equipment designed to meet possible energy conservation standards with the LCC of the equipment likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer selling price, distribution chain markups, sales taxes, and installation cost); (2) the operating cost of the equipment (energy cost, water and wastewater cost in some cases, and maintenance and repair cost); (3) equipment lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of higher-efficacy, reduced-wattage equipment through savings in the operating cost of the equipment. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline equipment, by the annual savings in operating costs. Chapters 2 and 9 of the interim TSD provide detail on the LCC and PBP analysis.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total customer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). DOE calculates NES and NPV for each candidate standard level for HID lamps as the difference between a base-case projection (without new standards) and the standards-case projection (with standards). Cumulative energy savings are the sum of the annual NES determined for the lifetime of the equipment shipped from 2017 to 2046. The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. To calculate energy use, equipment stock in a given year is multiplied by annual energy use. DOE calculates the national NPV of the customer savings resulting from energy conservation standards in conjunction with the NES. It calculates annual energy expenditures from annual energy use by incorporating projected energy prices and installed stock in each year. DOE calculates annual equipment expenditures by multiplying the projected shipments by the projected price per lamp, adjusted by *AEO2011* price trend projections. The difference between a base-case and a standards-case scenario gives the national energy bill savings and increased equipment expenditure in dollars. Chapters 2 and 11 of the interim TSD provide more detail on the NIA.

IV. Public Participation

DOE invites input from the public on all the topics described above. The interim analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of any NOPR. A final rule establishing any new energy conservation standards would contain the final analytical results and will be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the interim TSD from DOE's Web site and to be prepared to discuss its contents. A copy of the interim TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/23.* However, public meeting participants need not limit their comments to the topics identified in the interim TSD; DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this product or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by April 19, 2013 comments, data, and information on matters addressed in the interim TSD and on other matters relevant to consideration of energy conservation standards for HID lamps.

The public meeting and associated webinar will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs, prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Afterwards, DOE will publish either a determination that the standards for HID lamps need not be amended or a NOPR proposing to amend those standards. Any NOPR would include proposed energy conservation standards for the equipment covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

A. Attendance at Public Meeting

The time and date of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

You can attend the public meeting via webinar, and registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/23.* Participants are responsible for ensuring their computer systems are compatible with the webinar software.

The purpose of the meeting is to receive comments and to help DOE understand potential issues associated with this rulemaking. DOE must receive requests to speak at the meeting before 4:00 p.m. March 19, 2013. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4:00 p.m. March 26, 2013.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in today's notice or who is a representative of a group or class of persons that has

an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than the date provided at the beginning of this notice. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–2010–BT–STD–0043 and/or RIN 1904–AC36 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of public meeting.

Issued in Washington, DC, on February 20, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–04672 Filed 2–27–13; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission proposes to amend its Rules of Practice to update its fee schedule for provision of services in disseminating information and records to the public to reflect changes in the types of services that are provided, changes in the costs of providing services, and to add other fees for new services.

DATES: Comments must be submitted on or before March 29, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fee Schedule Rulemaking, 16 CFR Part 4.8, Project No. P122102'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/feeschedule*, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex T), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue

NW., Washington, DC 20580, (202) 326–3355.

SUPPLEMENTARY INFORMATION: The Commission has determined that it is necessary to update its fee schedule for provision of services to the public, which was last changed in 1998. Since then, the Freedom of Information Act (''FOIA'') was amended once in late 2007 by the Openness Promotes Effectiveness in our National Government Act of 2007, Public Law 110–175, 121 Stat. 2524 (''2007 FOIA Amendments''). The Commission proposes to change its fee schedule to implement the 2007 FOIA Amendments as appropriate. There have also been changes in technology and to the costs of providing services over the last decade, necessitating revisions to reflect both new and discontinued services that the FTC offers the public. The proposed changes will also be useful in providing additional notice to the public and to the FTC's professional and administrative staff about the procedures governing how the agency responds to FOIA requests. The additional guidance will supplement and restate the information available at the FOIA page on the FTC Web site, *http://www.ftc.gov/foia/index.shtm.*

As required by the FOIA, the Commission seeks public comment on the proposed revisions to its fee regulations set forth in this document. *See* 5 U.S.C. 552(a)(4)(A)(i). In a separate document published in today's **Federal Register**, the Commission has published final regulations to make other related administrative rule changes that do not require public comment. For example, those Rule amendments establish a new category of public record materials; provide additional contact information for the filing of initial FOIA requests; set out agency procedures for acknowledging the receipt of a request, the proper filing of a request, and the ''cut-off'' date for searches; and allow additional time to file FOIA appeals in unusual circumstances.

Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 29, 2013. Write ''FOIA Fee Rulemaking, 16 CFR Part 4.8, Project No. P122102'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f). *See also* FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/feeschedule*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov*, you also may file a comment through that Web site.

If you file your comment on paper, write FOIA Fee Rulemaking, 16 CFR Part 4.8, Project No. P122102 on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex T), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 29, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Proposed Changes to Fee Regulation

The Freedom of Information Reform Act of 1986 (''FOIA Reform Act'') charged the Office of Management and Budget (''OMB'') with responsibility for promulgating, pursuant to notice and comment, guidelines containing a uniform schedule of fees for individual agencies to follow when promulgating their FOIA fee regulations. 5 U.S.C. 552(a)(4)(A)(i). On March 27, 1987, the OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines (''OMB Fee Guidelines'').[2] OMB issued guidance therein as directed but also concluded that issuance of a government-wide fee schedule was precluded by language of FOIA Reform Act requiring ''each agency's fees to be based upon its direct reasonable operating costs of providing FOIA services.'' *See* 52 FR at 10015. The FOIA Reform Act mandated that agencies conform their fee schedules to these guidelines. The guidelines specifically direct that ''[a]gencies should charge fees that recoup the full allowable direct costs they incur.'' *Id.* at 10018.

In Rule 4.8(a)(2), 16 CFR 4.8(a)(2), the Commission proposes to clarify that the term ''duplication'' includes the process of converting paper to electronic format (if requested by the requester and readily reproducible in that form). The Commission also proposes to clarify that allowable ''direct costs,'' like operator time, can be charged in all instances for commercial requesters, and in some instances for other types of requesters, but only after the amount actually converted from paper to electronic format exceeds the equivalent of 100 free pages that those requesters are

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* 16 CFR 4.9(c).

[2] Office of Management and Budget: The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987).

entitled to receive under the OMB Guidelines.

In Rule 4.8(a)(3), 16 CFR 4.8(a)(3), the Commission proposes to add that review costs are recoverable even if a record ultimately is not disclosed.

In Rule 4.8(a)(4), 16 CFR 4.8(a)(4), the Commission proposes to expand the definition of ''direct costs'' to incorporate pre-existing guidance from the OMB Fee Guidelines.

In Rule 4.8(b), 16 CFR 4.8(b), the Commission proposes to clarify that the fee charges set out in this section apply unless the requester establishes the applicability of a public interest fee waiver pursuant to § 4.8(e). The Commission also includes a chart summarizing the types of charges that apply to requester categories set out later in paragraphs (b)(1)–(b)(3).

In Rule 4.8(b)(2), 16 CFR 4.8(b)(2), the Commission proposes to amend the definitions for ''representative of the news media'' to implement the definition codified at 5 U.S.C. 552(a)(4)(A)(ii) by the 2007 FOIA Amendments. The Commission also proposes amending the definition of ''educational institution'' to more closely comport with Section 6(h) of the 1987 OMB Fee Guidelines: a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research of the institution, not an individual goal.

In Rule 4.8(b)(4), 16 CFR 4.8(b)(4), the Commission proposes revising the waiver of small charges section from those that do not exceed $14 to those under $25. Under the Federal Claims Collection Standards, 31 CFR 900–904, the Commission is obligated to refer FOIA fee debts that are overdue more than 180 days to the Financial Management Services (''FMS'') at the Department of Treasury. However, FMS does not typically pursue repayment for any debts that are under $25 except for certain situations set out by FMS regulations.[3] The Commission believes that the FTC should not charge any fees that the Department of Treasury will not attempt to collect.

In Rule 4.8(b)(5), 16 CFR 4.8(b)(5), the Commission proposes to clarify that this section's reference to materials that are not subject to the fee provisions of Rule 4.8 and that are available without charge are public record materials.

Rule 4.8(b)(6), 16 CFR 4.8(b)(6), contains the Commission's uniform schedule of fees that applies to records held by all constituent units of the Commission and to all requests made for materials on the public record and those made under the FOIA and the Privacy Act of 1974, 5 U.S.C. 552a. Periodically, the Commission reviews that rule to update those fees to reflect its current costs. The Commission proposes changes to update the schedule to reflect current costs and types of products and services provided.

The Commission proposes adding new fee categories for the provision of compact discs (''CDs''), DVDs, and videotape cassettes, which are now used more extensively in sending data to FOIA requesters. The Commission has also discontinued providing most microfiche services, and the section relating to those fees is being revised to reflect this. For example, the Commission no longer converts paper records into electronic fiche format. The Commission's Consumer Response Center no longer converts microfiche records into paper. However, the Commission's Library currently has two microfiche/film reader/printers, and patrons may photocopy or print from these machines at the rate of $0.14 per page.

Most of the microfiche/film files are stored and managed off-site by two contractors, Iron Mountain Archival Services and the National Archive and Records Administration's Washington National Records Center. The fees that the FTC charges the public for the conversion of such files into paper are in accordance with the terms of the FTC's two contracts, which were awarded after open and transparent General Services Administration bidding processes. The OMB Fee Guidelines encourage gencies ''to contract with private sector services to locate, reproduce and disseminate records in response to FOIA Requests when that is the most efficient and least costly method. When doing so * * * agencies should ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks.'' *See* 52 FR at 10018. The Commission has determined that the fees incurred by the requesters are no greater for the services that Iron Mountain performs than they would be if the Commission staff itself performed these tasks.

Additionally, the Commission proposes to update fees for Express Mail delivery services and certification services to reflect current actual costs. Section 7(e) of the OMB Fee Guidelines indicates that ''[n]either the FOIA nor its fee structure cover these kinds of services [and] [a]gencies should recover the full costs of providing services * * * to the extent that they elect to provide them.'' *See* 52 FR at 10018. Postal Service rates tend to change frequently. Therefore, the proposed rule would no longer list a specific Postal Service rate, but would instead state that current U.S. Postal Service market rates will be charged for Express Mail delivery. Fees for certification services, which authenticate documents as being true and proper Commission records, would be raised under the proposed rule to cover the increased costs of attorney and clerical staff time in preparing such records for certification.

In Rule 4.8(b)(6), 16 CFR 4.8(b)(6), the Commission proposes further clarifying that duplication costs include the quarterly hour time that staff spends operating the duplicating machinery that converts paper to electronic format by scanning or other means. Commercial requesters are charged the direct costs associated with converting paper copies to electronic format. Other categories of requesters are charged the direct costs after they receive records equal to 100 pages of paper (*e.g.,* a computer disc with 100 pages of information).

In Rule 4.8(b)(7), to be codified as 16 CFR 4.8(b)(7), the Commission proposes inserting the FOIA statutory mandate that certain search fees will not be assessed for responses that fail to comply with the time limits in which to respond to a FOIA request, provided at 5 U.S.C. 552(a)(4)(A)(viii) and 16 CFR 4.11(a)(1)(ii).

In Rule 4.8(c)–(e), 16 CFR 4.8(c) through (e), the Commission proposes to add language that merely clarifies the information needed to determine fees, to establish an agreement to pay fees, and the standards for public interest fee waivers. In particular, the Commission proposes to clarify in Rule 4.8(c), the procedures for appealing fee category and fee waiver determinations.

In Rule 4.8(d), 16 CFR 4.8(d), relating to procedures for establishing an agreement to pay fees, if the agreement is absent and the estimated fees exceed $25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees. If the requester does not respond to the notification that the estimated fees exceed $25.00 within

[3] See 31 CFR 285.12(c)(4), which reads as follows: Agencies are not required to transfer to FMS debts which are less than $25 (including interest, penalties, and administrative costs), or such other amount as FMS may determine. Agencies may transfer debts less than $25 to FMS if the creditor agency, in consultation with FMS, determines that transfer is important to ensure compliance with the agency's policies or programs. Agencies may combine individual debts of less than $25 owed by the same debtor for purposes of meeting the $25 threshold.

10 days from the date of the notification, the request will be closed.

Lastly, the Commission proposes to revise Rule 4.8(k), 16 CFR 4.8(k), to reflect amendments made by the Debt Collection Improvements Act of 1996 (Pub. L. 104–134), which require agencies under the Federal Claims Collection Standards cited earlier to attempt to collect administratively established debts, such as FOIA fees, when bills are more than 30 days and up to 180 days past due. Also, the FCSS does not limit the agency's ability to pursue other authorized remedies such as alternative dispute resolutions and arbitration, and the Commission is including provisions for such remedial procedures. As previously noted, the Debt Collection Improvement Act of 1996 requires the Commission to forward all such debts, with certain exceptions, that are still unpaid after 180 days to the Department of Treasury for further debt collection efforts.

Proposed Change to Fee Section in Rule 4.11

There is a proposed new insert for Rule 4.11(a)(3)(i)(A)(*3*), which provides the explicit right to appeal fee waiver determinations and includes a clear deadline for filing the appeal.

The Commission believes that the proposed Rule amendments do not require an initial regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not ''small entities'' within the meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Moreover, these proposed rule amendments are matters of agency practice and procedure that are exempt from notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), which also exempts the proposed amendments from the analysis requirements of the Regulatory Flexibility Act. Likewise, the proposed amendments do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–520. The Commission nonetheless solicits comments on any economic and regulatory impact of the proposed rule; paperwork requirements, if any, that commenters believe the amendments are believed to impose upon private persons; and possible regulatory alternatives to reduce the amendments' economic impact, if any, while fully implementing the statutory mandate. The Commission will consider any such comments before promulgating the amendments in final form.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

■ 2. Amend § 4.8 by revising paragraphs (a)(2) through (4), (b) introductory text, (b)(2) through (6), by adding paragraph (b)(7), and by revising paragraphs (c) through (f) and (k) to read as follows:

§ 4.8 Costs for obtaining Commission records.

(a) * * *

(2) The term *duplication* refers to the process of making a copy of a document for the purpose of releasing that document in response to a request for Commission records. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation such as magnetic tape or computer disc. For copies prepared by computer and then saved to a computer disc, the Commission charges the direct costs, including operator time, of production of the disc or printout if applicable. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. As set out in paragraph (b) of this section, certain requesters do not pay for direct costs associated with duplicating the first 100 pages.

(3) The term *review* refers to the examination of documents located in response to a request to determine whether any portion of such documents may be withheld, and the redaction or other processing of documents for disclosure. Review costs are recoverable from commercial use requesters even if a record ultimately is not disclosed. Review time includes time spent considering formal objections to disclosure made by a business submitter but does not include time spent resolving general legal or policy issues regarding the release of the document.

(4) The term *direct costs* means expenditures that the Commission actually incurs in processing requests. Direct costs include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of document review facilities or the costs of heating or lighting such a facility or other facilities in which records are stored. The direct costs of specific services are set forth in paragraph (b)(6) of this section.

(b) *Fees.* User fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552(a) shall be charged according to this paragraph, unless the requester establishes the applicability of a public interest fee waiver pursuant to paragraph (e) of this section. The chart summarizes the types of charges that apply to requester categories set out in paragraphs (b)(1) through (3) of this section.

Requester categories	Fee charged for all search time	Fee charged for all review time	Duplication charges
Commercial	Fee	Fee	Fee charged for all duplication.
Educational, Non-commercial Scientific Institution, or News Media.	No charge	No charge	No charge for first 100 pages.
Other (General Public)	Fee after two hours	No charge	No charge for first 100 pages.

* * * * *

(2) *Educational requesters, non-commercial scientific institution requesters, and representative of the news media.* Requesters in these categories will be charged for the direct costs to duplicate documents, excluding charges for the first 100 pages.

(i) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further the scholarly research of the institution and are not sought for a commercial or an individual use or goal.

(ii) A *non-commercial scientific institution is* an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (b)(1) of this section, and that is operated solely to conduct scientific research the results of which are not intended to promote any particular product or industry.

(iii) A *representative of the news media is* any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase by or subscription by the general public or free distribution to the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would provide a solid basis for such an expectation, but the past publication record of a requester may also be considered in making such a determination.

(3) *Other requesters.* Other requesters not described in paragraphs (b)(1) or (2) will be charged for the direct costs to search for and duplicate documents, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge.

(4) *Waiver of small charges.* Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request are under $25.00.

(5) *Materials available without charge.* These provisions do not apply to recent Commission decisions and other public materials that may be made available to all requesters without charge while supplies last.

(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission:

Duplication:	
Paper to paper copy (up to 8.5″ x 14″)	$0.14 per page.
Converting paper into electronic format (scanning)	Quarterly hour rate of operator (Clerical, Other Professional, Attorney/Economist).
Electronic Services:	
Preparing electronic records and media	$10.00 per qtr. hour.
Compact disc (CD)	$3.00 per disc.
DVD	$3.00 per disc.
Videotape cassette	$2.00 per cassette.
Microfilm Services:	
Conversion of existing fiche/film to paper	$0.14 per page.
Other Fees:	
Certification	$25.00 each.
Express Mail	U.S. Postal Service Market Rates.
Records maintained at Iron Mountain or Washington National Records Center facilities (records retrieval, refiling, et cetera).	Contract Rates.
Other Services as they arise	Market Rates.

Note to paragraph (b)(6): *Search, review and duplication fees.* Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review purposes, as well the costs of operating duplication machinery such as converting paper to electronic format (scanning), are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review or duplication procedure belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580; (202) 326–2222.

(7) *Untimely responses.* Search fees will not be assessed for responses that fail to comply with the time limits in which to respond to a Freedom of Information Act request, provided at 5 U.S.C. 552(a)(4)(A)(viii) and § 4.11(a)(1)(ii), and if there are no unusual or exceptional circumstances, as those terms are defined by 5 U.S.C. 552(a)(6) and § 4.11(a)(1)(ii). Duplication fees will not be assessed for an untimely response, where there are no unusual or exceptional circumstances, made to a requester qualifying for one of the fee categories set forth in paragraph (b)(2) of this section.

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for non-commercial purposes or whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The deciding official (as designated by the General Counsel) will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester. *See* § 4.11(a)(3)(i)(A)(*3*) of this chapter for procedures on appealing fee category and fee waiver determinations.

(d) *Agreement to pay fees.* (1) Each request that does not contain an application for a fee waiver as set forth in § paragraph (e) of this section shall specifically indicate that the requester will either:

(i) Pay, in accordance with paragraph (b) of this section, whatever fees may be charged for processing the request; or

(ii) Pay such fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached.

(2) Each request that contains an application for a fee waiver shall specifically indicate whether the requester, in the case that the fee waiver is not granted, will:

(i) Pay, in accordance with paragraph (b) of this section, whatever fees may be charged for processing the request;

(ii) Pay fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached; or

(iii) Not pay fees, whereby the processing of the request will cease at the point fees are to be incurred in accordance with paragraph (b) of this section.

(3) If the agreement required by this section is absent, and if the estimated fees exceed $25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees. If the requester does not respond to the notification that the estimated fees exceed $25.00 within 10 calendar days from the date of the notification, the request will be closed.

(e) *Public interest fee waivers.* (1) *Procedures.* A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The deciding official (as designated by the General Counsel) will rule on applications for fee waivers. To appeal the deciding official's determination of the fee waiver, a requester must follow the procedures set forth in § 4.11(a)(3).

(2) *Standards.* (i) The first requirement for a fee waiver is that disclosure will likely contribute significantly to public understanding of the operations or activities of the government. This requirement shall be met if the requester establishes that:

(A) The subject matter of the requested information concerns the operations or activities of the Federal government;

(B) The disclosure is likely to contribute to an understanding of these operations or activities;

(C) The understanding to which disclosure is likely to contribute is the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons; (e.g., by providing specific information about the requester's expertise in the subject area of the request and about the ability and intention to disseminate the information to the public); and

(D) The likely contribution to public understanding will be significant.

(ii) The second requirement for a fee waiver is that the request not be primarily in the commercial interest of the requester. This requirement shall be met if the requester shows either:

(A) That the requester does not have a commercial interest that would be furthered by the requested disclosure; or

(B) If the requester does have a commercial interest that would be furthered by the requested disclosure, that the public interest in disclosure outweighs the identified commercial interest of the requester that the disclosure is not primarily in the requester's commercial interest.

(f) *Searches that do not yield responsive records.* Charges may be assessed for search time even if the agency fails to locate any responsive records or if it locates only records that are determined to be exempt from disclosure.

* * * * *

(k) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).* The Commission will pursue repayment, where appropriate, by employing the provisions of the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards (FCSS), 31 CFR 900–904, and any other applicable authorities in collecting unpaid fees assessed under this section, including disclosure to consumer reporting agencies and use of collection agencies. The FCSS does not limit the agency's ability to pursue other authorized remedies such as alternative dispute resolution and arbitration.

■ 3. In § 4.11, add paragraph (a)(3)(i)(A)(*3*) to read as follows:

§ 4.11. Disclosure requests.

(a) * * *

(3) * * *

(i) * * *

(A) * * *

(*3*) If an initial request for a fee waiver or reduction is denied, the requester may, within 30 days of the date of the letter notifying the requester of that decision, appeal such denial to the General Counsel. In unusual circumstances, the time to appeal may be extended by the General Counsel or his or her designee.

* * * * *

By direction of the Commission, Chairman Leibowitz not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2013–04480 Filed 2–27–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–120391–10]

RIN 1545–BJ60

Coverage of Certain Preventive Services Under the Affordable Care Act; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to proposed rules.

SUMMARY: This document contains a correction to proposed rules (REG–120391–10) that was published in the **Federal Register** on Wednesday, February 6, 2013 (77 FR 8456). The proposed rules propose amendments to rules regarding coverage for certain preventive services under section 2713 of the Public Health Service Act, as added by the Patient Protection and Affordable Care Act, as amended, and incorporated into the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Karen Levin at (202) 927–9639 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed rules (REG–120391–10) that is the subject of these corrections is under Section 2713 of the Public Health Service Act.

Need for Correction

As published, the proposed rules (REG–120391–10) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the proposed rules (REG–120391–10), that was the subject of FR Doc. 2013–02420, is corrected as follows:

On page 8456, in the heading, column 3, the regulation number is corrected to read [REG–120391–10].

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2013–04608 Filed 2–27–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2012–0970]

RIN 1625–AA00, AA08

Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the list of special local regulations and safety zones established for recurring marine events and fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. This rulemaking proposes to revise Coast Guard regulations by adding 15 new annual recurring marine events, fireworks displays and revising event date(s) and coordinates for 31 previously established locations within the geographic boundary of the Fifth Coast Guard District. This proposed rule would also delete 21 previously listed marine events, fireworks displays and corresponding regulated areas that no longer occur. These regulations would apply to all events listed in the table attached to the regulation, and include events such as regattas, power boat races, marine parades, swimming races and fireworks displays. Special local regulations and safety zones are being proposed to provide for the safety of life on navigable waters during these events, reduce the Coast Guard's administrative workload and expedite public notification of events. Entry into or movement within these proposed regulated areas during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

DATES: Comments and related material must be received by the Coast Guard on or before April 1, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Dennis M. Sens, Prevention Division, Fifth Coast Guard District, (757) 398–6204, *Dennis.M.Sens@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2012–0970] 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 8 1/2 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–2012–0970) 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 special local regulations at 33 CFR 100.501 were amended in the January 19, 2012, issue of the **Federal Register** (77 FR 2632). The purpose of the rulemaking was to revise the TABLE to 33 CFR 100.501 by adding new annual recurring marine events, modifying event date(s) for previously established locations within the geographic boundary of the Fifth Coast Guard District; and delete previously listed marine events and corresponding regulated areas that no longer occur.

The safety zones at 33 CFR 165.506 were amended in the March 23, 2012, issue of the **Federal Register** (77 FR 16932). The Coast Guard revised the list of permanent safety zones in the TABLE to 33 CFR 165.506, for recurring fireworks displays, by adding new locations, deleting previously established locations and modifying previously established locations within the geographic boundary of the Fifth Coast Guard District.

C. Basis and Purpose

The Coast Guard proposes to revise the list of permanent special local regulations at 33 CFR 100.501 and safety zones at 33 CFR 165.506, established for recurring marine events and fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. The Fifth Coast Guard District is comprised of the land areas and U.S. navigable waters adjacent to North Carolina, Virginia, District of Columbia, Maryland, Delaware and portions of Pennsylvania and New Jersey. For a detailed description of the geographical area of the district and each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

Special Local Regulations

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. Currently there are 59 special local regulations that are established and enforced at various periods throughout the year that are held on an annual basis. This proposed rule will decrease the total number of special local regulations to 51 locations for marine events within the boundary of the Fifth Coast Guard District. This regulation currently includes events such as sailing regattas, power boat races, swim races, holiday parades, crew and other paddle craft races. The Coast Guard proposes to revise the list of special local regulations at 33 CFR 100.501, established for various marine events, by adding 7 new annual recurring events and revising 13 previously established locations within the geographic boundary of the Fifth Coast Guard District. This rule also deletes 15 previously listed marine events and corresponding regulated areas that are no longer occurring.

The Coast Guard proposes to revise regulations at 33 CFR 100.501 by adding 7 new marine event locations to the permanent special local regulations listed in this section. The new special local regulations are listed in the following table, including reference by section as printed in the Table to § 100.501.

No.	Table to § 100.501 section	Location
1	a.14	Intra Coastal Waterway, Ocean City, NJ.
2	a.15	Intra Coastal Waterway, Atlantic City, NJ.
3	b.3	Spa Creek and Annapolis Harbor, MD.
4	b.15	Potomac River, MD (near US–301 bridge).
5	b.16	Potomac River, MD (near National Hbr. Marina).
6	b.20	Patuxent River, Solomons, MD.
7	d.5	Lake Gaston, Littleton, NC.

The Coast Guard proposes to revise regulations at 33 CFR 100.501 by modifying 13 existing regulated areas. This revision involves changes to event date(s) and coordinates as indicated in the next table. The revised special local regulations are listed in the following table, including reference by section as printed in the Table to § 100.501.

No.	Table to § 100.501 section	Location	Revision
1	a.2	Delaware River, Delaware City, DE	date.
2	a.8	N. Atlantic Ocean, Atlantic City, NJ	date.
3	b.1	Severn River (near USN Academy)	coordinates.
4	b.2	Severn River (near USN Academy)	date & coordinates.
5	b.10	Nanticoke River, Sharptown, MD	date & coordinates.
6	b.11	Prospect Bay, Kent Island, MD	date.
7	c.1	W. Branch Elizabeth River, Portsmouth, VA	date.
8	c.4	N. Atlantic Ocean, Ocean City, MD	date.
9	c.5	Elizabeth River, Norfolk, VA	date.
10	c.6	Rappahannock River, Layton, VA	date.
11	c.7	Assateague Channel, Chincoteague, VA	date.
12	c.9	Sunset Creek & Hampton River, Hampton, VA	date.
13	c.10	Back River, Poquoson, VA	date.

The Coast Guard proposes to amend regulations at 33 CFR 100.501 by disestablishing the following 15 special local regulated areas.

Date	Event	Regulated area
April—2nd Saturday	St. Mary's College Seahawk Sprint	Specified waters of St. Mary's River, Maryland.

Date	Event	Regulated area
September—4th or last Saturday and Sunday	Chesapeake Bay Powerboat Association Cambridge Offshore Challenge.	Specified waters of Choptank River, between Goose Point, MD and Oystershell Point, MD.
September—4th or last Saturday	Columbia Triathlon Assn. Inc. Chesapeakeman Ultra Triathlon.	Specified waters of Choptank River near Great Marsh Park, Cambridge, MD.
April—4th Friday and Saturday	Crawford Bay Crew Classic, Port Events, Inc.	Specified waters of Southern Branch, Elizabeth River, Virginia.
April—4th Saturday and Sunday	Wet Spring Regatta	Specified waters of Willoughby Bay near Norfolk, Virginia.
May—2nd Friday and Saturday	Hydroplane races, Virginia Boat Racing Assn.	Specified waters of Western Branch, Elizabeth River near City Park, Portsmouth, Virginia.
July—3rd Sunday	Watermen's Heritage Festival Workboat Races, Watermen's Museum of Yorktown, VA.	Specified waters of York River, near Yorktown, Virginia.
August—1st Friday, Saturday and Sunday	Power boat race, East Coast Boat Racing Club of New Jersey.	Specified waters of Chesapeake Bay near Cape Charles, Virginia.
September—2nd Friday and Saturday	Ocean City, MD power boat race, Offshore Performance Assn. Racing, LLC.	Specified waters of North Atlantic Ocean Near Ocean City, Maryland.
October—1st Saturday and Sunday	Clarksville Hydroplane Challenge, Virginia Boat Racing Association.	Specified waters of John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia.
October—2nd Friday	U.S. Navy Fleet Week Celebration.	Specified waters of Elizabeth River and its southern and eastern branches in the vicinity of Norfolk and Portsmouth, Virginia.
October—2nd Saturday and Sunday	Hydroplane races, Virginia Boat Racing Assn.	Specified waters of Western Branch, Elizabeth River, near City Park, Portsmouth, Virginia.
October—last Saturday and Sunday	Hampton Roads Sailboard Classic	Specified waters of Willoughby Bay, near Norfolk Virginia.
November—1st Friday and Saturday	International Search and Rescue Competition, Norfolk, VA.	Specified waters of Southern Branch, Elizabeth River, Portsmouth, Virginia.
November—4th or last Saturday	Holidays in the City, Norfolk Festevents, Ltd.	Specified waters of Elizabeth River and its southern and eastern branches in the vicinity of Norfolk and Portsmouth, Virginia.

In the past, the Coast Guard regulated marine events by creating individual special local regulations on a case by case basis. Most of these events required only the establishment of a regulated area and assignment of a patrol commander to ensure safety. Issuing individual, annual special local regulations has imposed a significant administrative burden on the Coast Guard.

Additionally, for the majority of these events, the Coast Guard does not receive notification of the marine event, or important details of the event are not finalized by event organizers, with sufficient time to publish a notice of proposed rulemaking and final rule before the event date. The Coast Guard must therefore issue temporary final rules that sometimes are completed only days before the event. This results in delayed notification to the public, potentially placing the public and event participants at risk.

This proposed rule would significantly relieve the administrative burden on the Coast Guard, and at the same time allow the sponsor of the event and the Coast Guard to notify the public of these events in a timely manner. The public would be provided with notice of events through the table attached to this regulation. This table lists each recurring marine event that may be regulated by the Coast Guard, and indicates the sponsor, as well as the date(s) and location of the event. Because the dates and locations of these events may change slightly from year to year, the specific information on each event, including the exact dates, specific areas, and description of the regulated area, would be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. This table would also be updated by the Coast Guard periodically to add new recurring events, update listed events to ensure accurate information is provided and remove events that no longer occur.

Based on the nature of marine events, large number of participants and spectators, and event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated areas. In order to protect the safety of all waterway users including event participants and spectators, this proposed rule would establish special local regulations for the time and location of each marine event.

This proposed rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port, or designated Coast Guard Patrol Commander. The designated ''Patrol Commander'' includes Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on their behalf. On-scene patrol commander may be augmented by local, State or Federal officials authorized to act in support of the Coast Guard.

Safety Zones

Under 33 CFR 165.23, the Coast Guard District Commander has authority to promulgate certain safety zones deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved fireworks displays. In this rule the Coast Guard proposes to revise the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. For a description of the geographical area of the Fifth District and subordinate Coast Guard Sectors—Captain of the Port Zones, please see 33

CFR 3.25. Currently there are 74 permanent safety zones established for fireworks displays within the geographic boundaries of the Fifth Coast Guard District. This rule will increase the total number of permanent safety zones to 76 locations for fireworks displays within the boundary of the Fifth Coast Guard District. The Coast Guard proposes to revise the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays, by adding 8 new locations, modifying 18 previously established locations and deleting 6 previously established locations within the geographic boundary of the Fifth Coast Guard District

This rule proposes to add 8 new safety zone locations to the permanent safety zones listed in 33 CFR 165.506. The new safety zones are listed in the following table, including reference by section as printed in the Table to § 165.506.

No.	Table to § 165.506 section	Location
1	b.4	Potomac River, Charles County, Newburg, MD.
2	c.19	James River, Richmond, VA.
3	c.20	Rappahannock River, Tappahannock, VA.
4	c.21	Cape Charles Harbor, Cape Charles, VA.
5	c.22	Pagan River, Smithfield, VA.
6	c.23	Sandbridge Shores, Virginia Beach, VA.
7	c.24	Chesapeake Bay, Virginia Beach, VA.
8	d.14	Pantego Creek, Bellhaven, NC.

The Coast Guard proposes to revise regulations at 33 CFR 165.506 by modifying 18 existing permanent safety zone locations. The revision involves changes to event date(s) and coordinates as indicated in the following table, including reference by section as printed in the Table to § 165.506.

No.	Table to § 165.506 section	Location	Revision
1	a.2	Indian River Bay, DE	coordinates.
2	a.4	N. Atlantic Ocean, Avalon, NJ	coordinates.
3	a.16	Delaware River, Philadelphia, PA	dates.
4	b.1	Washington Channel, Upper Potomac River, Washington, DC	coordinates.
5	b.2	Severn River & Spa Creek, Annapolis, MD	coordinates.
6	b.5	NW Harbor (East Channel), Patapsco River, MD	coordinates.
7	b.12	Fairview Beach, Potomac River, Charles County, MD	coordinates.
8	b.15	National Harbor, Potomac River, MD	date.
9	b.16	Susquehanna River, Havre de Grace, MD	date & coordinates.
10	b.18	Tred Avon River, Oxford, MD	date.
11	b.20	Upper Potomac River, Washington, DC	date & coordinates.
12	b.22	Potomac River, Cherry Hill, VA	dates & coordinates.
13	d.1	Morehead City Harbor Channel, NC	date.
14	d.2	Cape Fear River, Wilmington, NC	date.
15	d.3	Green Creek & Smith Creek, Oriental, NC	date.
16	d.4	Pasquotank River, Elizabeth, City, NC	coordinates.
17	d.5	Currituck Sound, Corolla, NC	date & coordinates.
18	d.7	Pamlico River, Washington, NC	date & coordinates.

The Coast Guard proposes to amend regulations at 33 CFR 165.506 by disestablishing the following 6 permanent safety zones.

Date	Fireworks display location	Regulated area
July 4th, December 31st	Patapsco River, (Middle Branch) Baltimore, MD.	Specified waters of Patapsco River, Middle Branch, near Hanover Street (SR–2) Bridge, Baltimore, Maryland.
July 4th	Chester River, Kent Island Narrows, MD	Specified waters of Chester River north of Kent Island Narrows (US–50/301) Bridge, Maryland.
July 4th	Chincoteague Channel, Chincoteague, VA	Specified waters of Chincoteague Channel southwest of Chincoteague Swing Bridge, Chincoteague, Virginia.
July 9th	Chesapeake Bay, Hampton, VA	Specified waters of Chesapeake Bay near Buckroe Beach, Hampton, Virginia.
May—2nd Saturday, September—1st Saturday and Sunday, December—1st Saturday.	Appomattox River, Hopewell, VA	Specified waters of Appomattox River near Hopewell, Virginia.
July 4th	James River, Williamsburg, VA	Specified waters of James River near Kingsmill Resort, Williamsburg, Virginia.

The Coast Guard typically receives numerous applications for fireworks displays in these general areas. Previously, a temporary safety zone was established on an emergency basis for each display. This limited the

opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provides the public the opportunity to comment on the safety zone locations, size, and length of time the zones will be enforced.

Each year organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow boaters within the safety zone if conditions permit.

The Coast Guard would publish notices in the **Federal Register** if an event sponsor reported a substantive change to the listed event venue or date. In the case of inclement weather the event usually will be conducted on the day following the date listed in the Table to § 165.506. Coast Guard Captains of the Port would give notice of the enforcement of each safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This would include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event. Fireworks barges or launch sites on land used in the locations stated in this rulemaking would also display a sign labeled ''FIREWORKS—DANGER—STAY AWAY''. The sign would be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water. This sign provides on scene notice that the safety zone is or will be enforced on that day. The sign will be diamond shaped, 4 foot by 4 foot with a 3-inch orange retro-reflective border. The word ''DANGER'' shall be 10-inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background. There would also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 30 minutes after its completion to enforce the safety zone.

The enforcement period for these proposed safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23.

This rule is being proposed to provide for the safety of life on navigable waters during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

D. Discussion of Proposed Rule

This proposed rule would apply to each event listed in the attached tables to this rule. Events listed in the tables are events that recur annually in the Fifth Coast Guard District. The tables provide the event name and sponsor, as well as an approximate date and location of the event.

For each event listed in the table, an event patrol, with a Patrol Commander in charge, may be assigned. The Patrol Commander may control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas would be required to immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property. Only event sponsors, designated participants, and official patrol vessels would be allowed to enter a regulated area. All persons and vessels not registered with the event sponsor as participants or official patrol vessels are considered spectators. Spectators may not enter the regulated area and may be confined to a designated spectator area to view the event. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators would be required to pass directly through the regulated area at safe speed and without loitering.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the short amount of time that vessels would be restricted from regulated areas, and the small size of these areas that are typically positioned away from high vessel traffic zones. Vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the proposed regulated areas. Advance notifications would also be made to the local maritime community by issuing Local Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly. Notifications to the public for most events will usually be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these special local regulated areas and safety zones will only be enforced 1 to 3 times per year.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the proposed regulated areas during the times these zones are enforced.

These proposed regulated areas and safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will ensure that small entities are able to operate in the areas where events are occurring to the extent possible while ensuring the safety of event participants and spectators. The enforcement period will be short in duration and, in many of the areas, vessels can transit safely around the regulated area. Generally, blanket permission to enter, remain in, or transit through these regulated areas will be given except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This proposed rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. This section of the rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are not required for this section of the rule.

This proposed rule involves implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are launched from or immediately adjacent to navigable waters of the United States. The category of activities includes fireworks launched from barges or near the shoreline that generally rely on the use of navigable waters as a safety buffer. This section of the rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to

amend 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Amend section 100.501 by revising TABLE TO § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
(a.) Coast Guard Sector Delaware Bay—COTP Zone				
1	June—1st Sunday	Atlantic County Day at the Bay.	Atlantic County, New Jersey.	The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: the area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N; and bounded to the west by a line that runs along longitude 074°37′00″ W.
2	May—3rd Sunday	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
3	June—Last Saturday	Westville Parade of Lights.	Borough of Westville and Westville Power Boat.	All waters of Big Timber Creek in Westville, NJ from shoreline to shoreline bounded on the south from the Route 130 Bridge and to the north by the entrance of the Delaware River.
4	July—3rd Sunday	OPA Atlantic City Grand Prix.	Offshore Performance Assn. (OPA).	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′50″ N, longitude 074°24′37″ W, to latitude 39°20′40″ N, longitude 074°23′50″ W, thence southwesterly to latitude 39°19′33″ N, longitude 074°26′52″ W, thence northwesterly to a point along the shoreline at latitude 39°20′43″ N, longitude 074°27′40″ W, thence northeasterly along the shoreline to latitude 39°21′50″ N, longitude 074°24′37″ W.
5	July—On or about July 4th.	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
6	August—2nd Friday, Saturday and Sunday.	Point Pleasant OPA/NJ Offshore Grand Prix.	Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn.	The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Normandy Beach, NJ at latitude 40°00′00″ N, longitude 074°03′30″ W, thence easterly to latitude 39°59′40″ N, longitude 074°02′00″ W, thence southwesterly to latitude 39°56′35″ N, longitude 074°03′00″ W, thence westerly to a position near the Seaside Heights Pier at latitude 39°56′35″ N, longitude 074°04′15″ W, thence northerly along the shoreline to the point of origin.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
7	July—3rd Wednesday and Thursday.	New Jersey Offshore Grand Prix.	Offshore Performance Assn. & New Jersey Offshore Racing Assn.	The waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″N; southward to Seaside Park, New Jersey latitude 39°55′00″ N, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.
8	August—3rd Friday	Thunder Over the Boardwalk Air show.	Atlantic City Chamber of Commerce.	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W.
9	September—3rd Saturday.	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
10	September—last Friday, Saturday and Sunday; October—first Friday, Saturday and Sunday.	Sunset Lake Hydrofest	Sunset Lake Hydrofest Assn.	All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.
11	October—2nd Saturday and Sunday.	The Liberty Grand Prix	Offshore Performance Assn. (OPA).	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
12	October—1st Monday (Columbus Day).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
13	December—On December 31st (New Year's Eve).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
14	September—Third Sunday.	Ocean City Air Show	Ocean City, NJ	All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; latitude 39°15′57″ N, longitude 074°35′09″ W thence northeast to latitude 39°16′34″ N, longitude 074°33′54″ W thence southeast to latitude 39°16′17″ N, longitude 074°33′29″ W thence southwest to latitude 39°15′40″ N, longitude 074°34′46″ W thence northwest to point of origin, near Ocean City, NJ.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
15	September—3rd Sunday	Atlantic City International Triathlon.	Atlantic City, NJ	All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; latitude 39°21′20″ N, longitude 074°27′18″ W thence northeast to latitude 39°21′27.47″ N, longitude 074°27′10.31″ W thence northeast to latitude 39°21′33″ N, longitude 074°26′57″ W thence northwest to latitude 39°21′37″ N, longitude 074°27′03″ W thence southwest to latitude 39°21′29.88″ N, longitude 074°27′14.31″ W thence south to latitude 39°21′19″ N, longitude 074°27′22″ W thence east to latitude 39°21′18.14″ N, longitude 074°27′19.25″ W thence north to point of origin, near Atlantic City, NJ.
(b.) Coast Guard Sector Baltimore—COTP Zone				
1	March—4th or last Saturday; or April—1st Saturday.	Safety at Sea Seminar	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by the Naval Academy (SR–450) Bridge and bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence easterly to Carr Point, MD at latitude 38°58′58″ N., longitude 076°27′41″ W.
2	March—3rd, 4th or last Friday, Saturday and Sunday; April and May—every Friday, Saturday and Sunday.	USNA Crew Races	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′58″ N., longitude 076°31′32″ W. thence to the north shoreline at latitude 39°01′11″ N., longitude 076°31′10″ W. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence easterly to Carr Point, MD at latitude 38°58′58″ N., longitude 076°27′41″ W.
3	May—1st, 2nd or 3rd Saturday.	TriRock Triathlon Series	The Competitor Group	The waters of Spa Creek and Annapolis Harbor, from shoreline to shoreline, bounded by a line drawn near entrance of Spa Creek originating at USNA seawall, latitude 38°58′40″ N, longitude 076°28′49″ W, thence south to latitude 38°58′32″ N, longitude 076°28′45″ W near Sycamore Point. The regulated area is bounded to the southwest by a line drawn from entrance of Annapolis Market Slip, latitude 38°58′34″ N, longitude 076°29′05″ W thence south to latitude 38°58′27″ N, longitude 076°28′56″ W near Chart House pier, Annapolis, MD.
4	May—1st Sunday	Nanticoke River Swim and Triathlon.	Nanticoke River Swim and Triathlon, Inc.	All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N, longitude 075°54′00″ W, thence westerly to latitude 38°18′00″ N, longitude 075°55′00″ W, thence northerly to latitude 38°20′00″ N, longitude 075°53′48″ W, thence easterly to latitude 38°19′42″ N, longitude 075°52′54″ W.
5	May—Saturday before Memorial Day.	Chestertown Tea Party Re-enactment Festival.	Chestertown Tea Party Festival.	All waters of the Chester River, within a line connecting the following positions: latitude 39°12′27″ N, longitude 076°03′46″ W; thence to latitude 39°12′19″ N, longitude 076°03′53″ W; thence to latitude 39°12′15″ N, longitude 076°03′41″ W; thence to latitude 39°12′26″ N, longitude 076°03′38″ W; thence to the point of origin at latitude 39°12′27″ N, longitude 076°03′46″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
6	May—3rd Friday, Saturday and Sunday.	Dragon Boat Races at Georgetown, Washington, DC.	Washington, D.C. Dragon Boat Festival, Inc.	The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge.
7	May—Tuesday and Wednesday before Memorial Day (observed).	USNA Blue Angels Air Show.	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
8	June—2nd Sunday	The Great Chesapeake Bay Bridges Swim Races.	Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23′05″ W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W, and 500 yards south of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′38.5″ N, longitude 076°20′06″ W.
9	June—3rd, 4th or last Saturday or July—2nd or 3rd Saturday.	Maryland Swim for Life	District of Columbia Aquatics Club.	The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N by the Maryland S.R. 213 Highway Bridge.
10	June—last Saturday and Sunday or July—2nd Saturday and Sunday.	Bo Bowman Memorial—Sharptown Regatta.	Virginia/Carolina Racing Assn.	All waters of the Nanticoke River near Sharptown, MD, from shoreline to shoreline, bounded to the south by Maryland S.R. 313 Highway Bridge and bounded to the north by a line drawn from latitude 38°33′09″ N, longitude 075°42′45″ W, thence southeasterly to latitude 38°33′04″ N, longitude 075°42′37″ W.
11	June—2nd, 3rd, 4th or last Saturday and Sunday or August—1st Saturday and Sunday.	Thunder on the Narrows	Kent Narrows Racing Assn.	All waters of Prospect Bay enclosed by the following points: latitude 38°57′52.0″ N, longitude 076°14′48.0″ W, to latitude 38°58′02.0″ N, longitude 076°15′05.0″ W, to latitude 38°57′38.0″ N, longitude 076°15′29.0″ W, to latitude 38°57′28.0″ N, longitude 076°15′23.0″ W, to latitude 38°57′52.0″ N, longitude 076°14′48.0″ W.
12	Labor Day weekend—Saturday and Sunday, or Monday.	Ragin on the River	Port Deposit, MD, Chamber of Commerce.	The waters of the Susquehanna River, adjacent to Port Deposit, Maryland, from shoreline to shoreline, bounded on the south by the U.S. I–95 fixed highway bridge, and bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W.
13	September—2nd Saturday or the Saturday after Labor Day.	Dragon Boat Races in the Inner Harbor.	Associated Catholic Charities, Inc.	The waters of the Patapsco River, Baltimore, MD, Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
14	June—3rd, 4th or last Saturday or Sunday.	Baltimore Dragon Boat Challenge.	Baltimore Dragon Boat Club.	The waters of Patapsco River, Northwest Harbor, in Baltimore, MD, from shoreline to shoreline, within an area bounded on the east by a line drawn along longitude 076°35′ W and bounded on the west by a line drawn along longitude 076°36′.
15	May—2nd or 3rd Saturday or June—1st, 2nd or 3rd Saturday.	Potomac River Sharkfest Swim.	Enviro-Sports Productions Inc.	The waters of the Potomac River, from shoreline to shoreline, bounded by a line drawn parallel and north of the Harry W. Nice Memorial Bridge (U.S. Route 301) originating at the eastern shoreline latitude 38°22′05″ N, longitude 076°59′03″ W, thence west to latitude 38°21′50″ N, longitude 077°00′54″ W, at the western shoreline. The regulated area is bounded by a line drawn parallel and south of the U.S. Route 301 highway bridge, originating at the eastern shoreline latitude 38°21′45″ N, longitude 076°58′58″ W thence west to latitude 38°21′29″ N, longitude 077°00′54″ W, at the western shoreline of Potomac River.
16	July—1st or 2nd Sunday	Swim Across the Potomac.	National Harbor Marina	The waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn that originates at Jones Point Park, VA at the west shoreline latitude 38°47′35″ N, longitude 077°02′22″ W, thence east to latitude 38°47′12″ N, longitude 077°00′58″ W, at east shoreline near National Harbor, MD. The regulated area is bounded to the south by a line drawn originating at George Washington Memorial Parkway highway overpass and Cameron Run, west shoreline latitude 38°47′23″ N, longitude 077°03′03″ W thence east to latitude 38°46′52″ N, longitude 077°01′13″ W, at east shoreline near National Harbor, MD.
17	October—last Saturday or November—1st Saturday.	MRE Tug of War	Maritime Republic of Eastport.	The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N, longitude 076°29′03.8″ W on the Annapolis shoreline to a position at latitude 38°58′26.4″ N, longitude 076°28′53.7″ W on the Eastport shoreline.
18	December—2nd Saturday.	Eastport Yacht Club Lighted Boat Parade.	Eastport Yacht Club	The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58.0″ N, longitude 076°27′40.0″ W, thence to Horn Point Warning Light (LLNR 17935), at 38°58′24.0″ N, longitude 076°28′10.0″ W, thence to Horn Point, at 38°58′20.0″ N, longitude 076°28′27.0″ W, and bounded on the north by the State Route 450 Bridge.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
19	Memorial Day weekend—Thursday, Friday, Saturday and Sunday, or Labor Day weekend—Thursday, Friday, Saturday and Sunday.	NAS Patuxent River Air Expo.	U.S. Naval Air Station Patuxent River, MD.	All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland, and All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N, longitude 076°23′43″ W; to latitude 38°18′16″ N, longitude 076°22′35″ W; thence to latitude 38°18′12″ N, longitude 076°22′37″ W; thence to latitude 38°18′36″ N, longitude 076°23′46″ W, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland.
20	September—2nd, 3rd or 4th Saturday and Sunday.	Chesapeake Challenge	Chesapeake Bay Powerboat Association.	All waters of the Patuxent River, within boundary lines connecting the following positions; originating near north entrance of MD Route 4 bridge, latitude 38°19′45″ N, longitude 076°28′06″ W, thence southwest to south entrance of MD Route 4 bridge, latitude 38°19′24″ N, longitude 076°28′30″ W, thence south to a point near the shoreline, latitude 38°18′32″ N, longitude 076°28′14″ W, thence southeast to a point near the shoreline, latitude 38°17′38″ N, longitude 076°27′26″ W, thence northeast to latitude 38°18′00″ N, longitude 076°26′41″ W, thence northwest to latitude 38°18′59″ N, longitude 076°27′20″ W, located at Solomons, MD, thence continuing northwest and parallel to shoreline to point of origin.
(c.) Coast Guard Sector Hampton Roads—COTP Zone				
1	April—3rd Saturday and Sunday or 4th Saturday and Sunday.	Hydroplane races	Virginia Boat Racing Assn.	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076° 22′27″ W, thence to latitude 36°50′06″ N, longitude 076° 21′57″ W, thence to latitude 36°50′15″ N, longitude 076° 21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076° 22′27″ W, thence to point of origin.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
2	May—last Friday, Saturday and Sunday or June—1st Friday, Saturday and Sunday.	Blackbeard Festival	City of Hampton	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 76°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 76°20′32.0″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48.0″ N, longitude 76°20′22.0″ W, across the river to the eastern shore at latitude 37°01′44.0″ N, longitude 76°20′13.0″ W, and to the north by the C & O Railroad Bridge. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26.0″ N, longitude 76°20′24.0″ W, latitude 37°01′22.0″ N, longitude 76°20′26.0″ W, and latitude 37°01′22.0″ N, longitude 76°20′23.0″ W. The anchorage area will be marked by orange buoys.
3	June—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday.	Norfolk Harborfest	Norfolk Festevents, Ltd	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
4	May—Last Saturday and Sunday or June—1st Saturday and Sunday.	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
5	June—3rd or 4th Saturday.	Cock Island Race	Portsmouth Boat Club & City of Portsmouth, VA.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
6	June—last Saturday or July—1st Saturday.	RRBA Spring Radar Shootout.	Rappahannock River Boaters Association (RRBA).	The waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W, and bounded on the east by a line running along longitude 076°56′00″ W.
7	July—last Wednesday and following Friday or August—first Wednesday and following Friday.	Pony Penning Swim	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N, longitude 075°22′40″ W, to latitude 37°54′50″ N, longitude 075°22′46″ W, and to the west by a line drawn from latitude 37°54′54.0″ N, longitude 075°23′00″ W, to latitude 37°54′49″ N, longitude 075°22′49″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
8	August—2nd Friday, Saturday and Sunday.	Hampton Cup Regatta	Hampton Cup Regatta Boat Club.	The waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the following boundaries: to the north, a line drawn along latitude 37°01′00″ N, to the east a line drawn along longitude 076°18′30″ W, to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258—Mercury Boulevard Bridge.
9	September—2nd Friday, Saturday and Sunday or 3rd Friday, Saturday and Sunday.	Hampton Bay Days Festival.	Hampton Bay Days Inc	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 076°20′26.0″ W, to the finger pier across the river at Fisherman′s Wharf, located at latitude 37°01′01.5″ N, longitude 076°20′32.0″ W.
10	October—2nd Sunday or 3rd Sunday.	Poquoson Seafood Festival Workboat Races.	City of Poquoson	The waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ N, bounded on the south by a line drawn along latitude 37°06′15″ N, bounded on the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W.
11.	August—3rd Saturday and Sunday or 4th Saturday and Sunday.	Mattaponi Drag Boat Race.	Mattaponi Volunteer Rescue Squad and Dive Team.	All waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W, near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W just north of Wakema, Virginia.
(d.) Coast Guard Sector North Carolina—COTP Zone				
1	June—1st Saturday and Sunday.	Carolina Cup Regatta	Virginia Boat Racing Assn.	The waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N, longitude 076°12′00″ W, thence southwesterly to latitude 36°17′35″ N, longitude 076°12′18″ W at Cottage Point.
2	August—1st Friday, Saturday and Sunday.	SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix.	Super Boat International Productions (SBIP), Inc.	The waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ N, longitude 076°59′23″ W, to Broad Creek Point at latitude 35°29′04″ N, longitude 076°58′44″ W, and bounded on the north by the Norfolk Southern Railroad Bridge.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
3	September—3rd and or 4th or last Sunday.	Crystal Coast Grand Prix	North Carolina East Sports, Inc. N/P.	The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N, longitude 076°42′48″ W, thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N, longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N, longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N, longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N, longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N, longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N, longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin.
4	September—3rd, 4th or last Saturday; October—last Saturday; November—1st and/or 2nd Saturday.	Wilmington YMCA Triathlon.	Wilmington, NC, YMCA	The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.
5	August—2nd Saturday ...	The Crossing	Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, AKA O'SAIL.	All waters of Lake Gaston, from shoreline to shoreline, directly under the length of Eaton Ferry Bridge (NC State Route 903), latitude 36°31′06″ N, longitude 077°57′37″ W, bounded to the west by a line drawn parallel and 100 yards from the western side of Eaton Ferry Bridge near Littleton, NC.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. 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.

■ 4. Amend section 165.506 by revising the section heading and TABLE TO § 165.506 to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

* * * * *

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Date	Location	Regulated area
(a.) Coast Guard Sector Delaware Bay—COTP Zone			
1	July 4th	North Atlantic Ocean, Bethany Beach, DE, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°32′08″ N, longitude 075°03′15″ W, adjacent to shoreline of Bethany Beach, DE.
2	Labor Day	Indian River Bay, DE, Safety Zone.	All waters of the Indian River Bay within a 700 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N, longitude 075°08′18″ W.
3	July 4th	North Atlantic Ocean, Rehoboth Beach, DE, Safety Zone.	All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N, longitude 075°04′21″ W, approximately 400 yards east of Rehoboth Beach, DE.
4	July 4th	North Atlantic Ocean, Avalon, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°06′19.5″ N, longitude 074°42′02.15″ W, in the vicinity of the shoreline at Avalon, NJ.
5	July 4th September—2nd Saturday	Barnegat Bay, Barnegat Township, NJ, Safety Zone.	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.
6	July 4th	North Atlantic Ocean, Cape May, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.
7	July 3rd	Delaware Bay, North Cape May, NJ, Safety Zone.	All waters of the Delaware Bay within a 360 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N, longitude 074°58′30″ W.
8	August—3rd Sunday	Great Egg Harbor Inlet, Margate City, NJ, Safety Zone.	All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ.
9	July 4th August every Thursday September 1st Thursday	Metedeconk River, Brick Township, NJ, Safety Zone.	The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, near the shoreline at Brick Township, NJ.
10	July—1st Friday	North Atlantic Ocean, Atlantic City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge located at latitude 39°20′58″ N, longitude 074°25′58″ W, near the shoreline at Atlantic City, NJ.
11	July 4th October—1st Saturday	North Atlantic Ocean, Ocean City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.
12	May—4th Saturday	Barnegat Bay, Ocean Township, NJ, Safety Zone.	All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N, longitude 074°10′46″ W.
13	July 4th	Little Egg Harbor, Parker Island, NJ, Safety Zone.	All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N, longitude 074°14′43″ W, approximately 100 yards north of Parkers Island.
14	September—3rd Saturday	Delaware River, Chester, PA, Safety Zone.	All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yard radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N, longitude 075°22′42″ W.
15	September—3rd Saturday	Delaware River, Essington, PA, Safety Zone.	All waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yard radius of the fireworks barge located in the approximate position latitude 39°51′18″ N, longitude 075°18′57″ W.
16	July 3rd, 4th or 5th, Columbus Day, December 31st, January 1st.	Delaware River, Philadelphia, PA, Safety Zone.	All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N, longitude 075°08′28.1″ W; thence to latitude 39°56′29.1″ N, longitude 075°07′56.5″ W, and bounded on the north by the Benjamin Franklin Bridge.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Date	Location	Regulated area
(b.) Coast Guard Sector Baltimore—COTP Zone			
1	April—1st or 2nd Saturday	Washington Channel, Upper Potomac River, Washington, DC, Safety Zone.	All waters of the Upper Potomac River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′20″ N, longitude 077°01′17″ W, located within the Washington Channel in Washington Harbor, DC.
2	July 4th December—1st and 2nd Saturday, December 31st.	Severn River and Spa Creek, Annapolis, MD, Safety Zone.	All waters of the Severn River and Spa Creek within an area bounded by a line drawn from latitude 38°58′40″ N, longitude 076°28′49″ W; thence to latitude 38°58′33″ N, longitude 076°28′49″ W; thence to latitude 38°58′45″ N, longitude 076°28′07″ W; thence to latitude 38°59′01″ N, longitude 076°28′37″ W, thence to latitude 38°58′57″ N, longitude 076°28′40″ W, thence to latitude 38°58′53″ N, longitude 076°28′34″ W, thence to point of origin; located near the entrance to Spa Creek and Severn River, Annapolis, MD.
3	Saturday before Independence Day holiday.	Middle River, Baltimore County, MD, Safety Zone.	All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N, longitude 076°23′49″ W, approximately 300 yards east of Rockaway Beach, near Turkey Point.
4	June—last Saturday July—3rd, 4th or last Saturday or Sunday.	Potomac River, Charles County, MD—Newburg, Safety Zone.	All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°23′41″ N, longitude 076°59′30″ W, located near Newburg, Maryland.
5	June 14th, July 4th September—2nd Saturday December 31st	Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N, 076°34′33″ W, located adjacent to the East Channel of Northwest Harbor.
6	May—2nd or 3rd Thursday or Friday. July 4th December 31st	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 100 yard radius of the fireworks barge in approximate position latitude 39°17′01″ N, longitude 076°36′31″ W, located at the entrance to Baltimore Inner Harbor, approximately 125 yards southwest of pier 3.
7	May—2nd or 3rd Thursday or Friday. July 4th December 31st	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′04″ N, longitude 076°36′36″ W, located in Baltimore Inner Harbor, approximately 125 yards southeast of pier 1.
8	July 4th December 31st	Northwest Harbor (West Channel) Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N, longitude 076°34′38″ W, located adjacent to the West Channel of Northwest Harbor.
9	July 4th	Patuxent River, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 200 yard radius of the fireworks barge located at latitude 38°19′17″ N, longitude 076°27′45″ W, approximately 800 feet from shore at Solomons Island, MD.
10	July 3rd	Chesapeake Bay, Chesapeake Beach, MD, Safety Zone.	All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′36″ N, longitude 076°31′30″ W, and within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′28″ N, longitude 076°31′29″ W, located near Chesapeake Beach, Maryland.
11	July 4th	Choptank River, Cambridge, MD, Safety Zone.	All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N, longitude 076°04′46″ W.
12	July—2nd or 3rd Saturday and last Saturday.	Potomac River, Fairview Beach, Charles County, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°19′57″ N, longitude 077°14′40″ W, located north of the shoreline at Fairview Beach, Virginia.
13	May—last Saturday July 4th	Potomac River, Charles County, MD—Mount Vernon, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°42′30″ N, longitude 077°04′47″ W; thence to latitude 38°42′18″ N, longitude 077°04′42″ W; thence to latitude 38°42′11″ N, longitude 077°05′10″ W; thence to latitude 38°42′22″ N, longitude 077°05′12″ W; thence to point of origin located along the Potomac River shoreline at George Washington's Mount Vernon Estate, Fairfax County, VA.
14	October—1st Saturday	Dukeharts Channel, Potomac River, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′27″ N, longitude 076°44′48″ W, located adjacent to Dukeharts Channel near Coltons Point, Maryland.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Date	Location	Regulated area
15	July—Day before Independence Day holiday and July 4th. November—3rd Thursday, 3rd Saturday and last Friday. December—1st, 2nd and 3rd Friday.	Potomac River, National Harbor, MD, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′13″ N, longitude 077°00′58″ W; thence to latitude 38°46′51″ N, longitude 077°01′15″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland.
16	Sunday before July 4th July 4th	Susquehanna River, Havre de Grace, MD, Safety Zone.	All waters of the Susquehanna River within a 300 yard radius of approximate position latitude 39°32′06″ N, longitude 076°05′22″ W, located on the island at Millard Tydings Memorial Park.
17	June and July—Saturday before Independence Day holiday.	Miles River, St. Michaels, MD, Safety Zone.	All waters of the Miles River within a 200 yard radius of approximate position latitude 38°47′42″ N, longitude 076°12′51″ W, located at the entrance to Long Haul Creek.
18	July 3rd	Tred Avon River, Oxford, MD, Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N, longitude 076°10′37″ W, approximately 500 yards northwest of the waterfront at Oxford, MD.
19	July 3rd	Northeast River, North East, MD, Safety Zone.	All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N, longitude 075°57′00″ W, approximately 400 yards south of North East Community Park.
20	June—2nd or 3rd Saturday July—1st, 2nd or 3rd Saturday September—1st or 2nd Saturday. December 31st	Upper Potomac River, Washington, DC, Safety Zone.	All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′40″ N, 077°02′07″ W, located near the waterfront of Alexandria, Virginia.
21	March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park.	Anacostia River, Washington, DC, Safety Zone.	All waters of the Anacostia River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′13″ N, longitude 077°00′16″ W, located near the Washington Nationals Ball Park.
22	June—last Saturday or July—first Saturday. July—3rd, 4th or last Saturday or Sunday.	Potomac River, Prince William County, VA, Safety Zone.	All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′10″ N, longitude 077°15′36″ W, located near Cherry Hill, Virginia.
(c.) Coast Guard Sector Hampton Roads—COTP Zone			
1	July 4th	North Atlantic Ocean, Ocean City, MD, Safety Zone.	All waters of the Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N, longitude 075°05′03.2″ W; thence to latitude 38°19′36.7″ N, longitude 075°04′53.5″ W; thence to latitude 38°19′45.6″ N, longitude 075°04′49.3″ W; thence to latitude 38°19′49.1″ N, longitude 075°05′00.5″ W; thence to point of origin. The size of the safety zone extends approximately 300 yards offshore from the fireworks launch area located at the high water mark on the beach.
2	May—4th Sunday June—3rd Monday, and June 29th. July 4th August—1st and 4th Sunday September—1st and 4th Sunday.	Isle of Wight Bay, Ocean City, MD, Safety Zone.	All waters of Isle of Wight Bay within a 350 yard radius of the fireworks barge in approximate position latitude 38°22′32″ N, longitude 075°04′30″ W.
3	July 4th	Assawoman Bay, Fenwick Island—Ocean City, MD, Safety Zone.	All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′57.6″ N, longitude 075°03′55.8″ W.
4	July 4th	Broad Bay, Virginia Beach, VA, Safety Zone.	All waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′08″ N, longitude 076°00′46″ W, located on the shoreline near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia.
5	October—1st Friday	York River, West Point, VA, Safety Zone.	All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N, longitude 076°47′19″ W.
6	July 4th	York River, Yorktown, VA, Safety Zone.	All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N, longitude 076°30′02″ W, located near Yorktown, Virginia.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Date	Location	Regulated area
7	May—1st Friday July 4th	James River, Newport News, VA, Safety Zone.	All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N, longitude 076°26′19″ W, located in the vicinity of the Newport News Shipyard, Newport News, Virginia.
8	June—4th Friday July—1st Friday July 4th	Chesapeake Bay, Norfolk, VA, Safety Zone.	All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N, longitude 076°15′00″ W, located near Ocean View Fishing Pier.
9	July 4th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N, longitude 076°03′27″ W, located at the First Landing State Park at Virginia Beach, Virginia.
10	Memorial Day June—1st and 2nd Friday, Saturday and Sunday. July 4th November—4th Saturday December—1st Saturday and December 31st. January—1st	Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone.	All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N, longitude 076°18′10.7″ W; thence to latitude 36°51′7.9″ N, longitude 076°18′01″ W; thence to latitude 36°50′45.6″ N, longitude 076°17′44.2″ W; thence to latitude 36°50′29.6″ N, longitude 076°17′23.2″ W; thence to latitude 36°50′7.7″ N, longitude 076°17′32.3″ W; thence to latitude 36°49′58″ N, longitude 076°17′28.6″ W; thence to latitude 36°49′52.6″ N, longitude 076°17′43.8″ W; thence to latitude 36°50′27.2″ N, longitude 076°17′45.3″ W thence to the point of origin.
11	July—3rd Saturday	John H. Kerr Reservoir, Clarksville, VA, Safety Zone.	All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N, longitude 078°32′50″ W, located near the center span of the State Route 15 Highway Bridge.
12	May, June, July, August, September, October—every Wednesday, Friday, Saturday and Sunday. July 4th	North Atlantic Ocean, Virginia Beach, VA, Safety Zone A.	All waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N, longitude 075°58′06″ W, located off the beach between 17th and 31st streets.
13	September—last Saturday or October—1st Saturday.	North Atlantic Ocean, VA Beach, VA, Safety Zone B.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N, longitude 075°58′09″ W, located on the 14th Street Fishing Pier.
14	Friday, Saturday, Sunday and Monday—Labor Day Weekend.	North Atlantic Ocean, VA Beach, VA, Safety Zone C.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N, longitude 075°58′00″ W, located off the beach between 2nd and 6th streets.
15	July 4th	Nansemond River, Suffolk, VA, Safety Zone.	All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N, longitude 076°34′42″ W, located near Constant's Wharf in Suffolk, VA.
16	February—4th Saturday July 4th	Chickahominy River, Williamsburg, VA, Safety Zone.	All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N, longitude 076°52′17″ W, near Barrets Point, Virginia.
17	July—3rd, 4th and 5th	Great Wicomico River, Mila, VA, Safety Zone.	All waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position latitude 37°50′31″ N, longitude 076°19′42″ W near Mila, Virginia.
18	July—1st Friday, Saturday and Sunday.	Cockrell's Creek, Reedville, VA, Safety Zone.	All waters of Cockrell's Creek located within a 420 foot radius of the fireworks display at approximate position latitude 37°49′54″ N, longitude 076°16′44″ W near Reedville, Virginia.
19	May—last Sunday	James River, Richmond, VA, Safety Zone.	All waters of the James River located within a 420 foot radius of the fireworks display at approximate position latitude 37°31′13.1″ N, longitude 077°25′07.84″ W near Richmond, Virginia.
20	June—last Saturday	Rappahannock River, Tappahannock, VA, Safety Zone.	All waters of the Rappahannock River located within a 400 foot radius of the fireworks display at approximate position latitude 37°55′12.0″ N, longitude 076°49′12.0″ W near Tappahannock, Virginia.
21	July 4th	Cape Charles Harbor, Cape Charles, VA, Safety Zone.	All waters of Cape Charles Harbor located within a 375 foot radius of the fireworks display at approximate position latitude 37°15′46.5″ N, longitude 076°01′30.3″ W near Cape Charles, Virginia.
22	July 4th	Pagan River, Smithfield, VA, Safety Zone.	All waters of the Pagan River located within a 420 foot radius of the fireworks display at approximate position latitude 36°59′18.0″ N, longitude 076°37′45.0″ W near Smithfield, Virginia.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Date	Location	Regulated area
23	July 4th	Sandbridge Shores, Virginia Beach, VA, Safety Zone.	All waters of Sandbridge Shores located within a 300 foot radius of the fireworks display at approximate position latitude 36°43′24.9″ N, longitude 075°56′24.9″ W near Virginia Beach, Virginia.
24	July 4th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of Chesapeake Bay located within a 600 foot radius of the fireworks display at approximate position latitude 36°54′58.18″ N, longitude 076°06′44.3″ W near Virginia Beach, Virginia.
(d.) Coast Guard Sector North Carolina—COTP Zone			
1	July 4th October—1st Saturday	Morehead City Harbor Channel, NC, Safety Zone.	All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N, longitude 076°42′59.6″ W, a position located at the west end of Sugar Loaf Island, NC.
2	April—2nd Saturday July 4th August—3rd Monday October—1st Saturday	Cape Fear River, Wilmington, NC, Safety Zone.	All waters of the Cape Fear River within an area bound by a line drawn from the following points: Latitude 34°13′54″ N, longitude 077°57′06″ W; thence northeast to latitude 34°13′57″ N, longitude 077°57′05″ W; thence north to latitude 34°14′11″ N, longitude 077°57′07″ W; thence northwest to latitude 34°14′22″ N, longitude 077°57′19″ W; thence east to latitude 34°14′22″ N, longitude 077°57′06″ W; thence southeast to latitude 34°14′07″ N, longitude 077°57′00″ W; thence south to latitude 34°13′54″ N, longitude 077°56′58″ W; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge.
3	July—1st Saturday and July 4th	Green Creek and Smith Creek, Oriental, NC, Safety Zone.	All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N, longitude 076°42′10.4″ W, located near the entrance to the Neuse River in the vicinity of Oriental, NC.
4	July 4th	Pasquotank River, Elizabeth City, NC, Safety Zone.	All waters of the Pasquotank River within a 300 yard radius of the fireworks launch barge in approximate position latitude 36°17′47″ N, longitude 076°12′17″ W, located approximately 400 yards north of Cottage Point, NC.
5	July 4th, or July 5th	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks barge in approximate position latitude 36°22′23.8″ N, longitude 075°49′56.3″ W.
6	July 4th November—3rd Saturday	Middle Sound, Figure Eight Island, NC, Safety Zone.	All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to a position located at latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at position latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to position latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin.
7	June—2nd Saturday July 4th	Pamlico River, Washington, NC, Safety Zone.	All waters of Pamlico River and Tar River within a 300 yard radius of latitude 35°32′25″ N, longitude 077°03′42″ W, a position located on the southwest shore of the Pamlico River, Washington, NC.
8	July 4th	Neuse River, New Bern, NC, Safety Zone.	All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N, longitude 077°01′35.8″ W; located 420 yards north of the New Bern, Twin Span, high rise bridge.
9	July 4th	Edenton Bay, Edenton, NC, Safety Zone.	All waters within a 300 yard radius of position latitude 36°03′04″ N, longitude 076°36′18″ W, approximately 150 yards south of the entrance to Queen Anne Creek, Edenton, NC.
10	July 4th November—Saturday following Thanksgiving.	Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	All waters of Motts Channel within a 500 yard radius of the fireworks launch site in approximate position latitude 34°12′29″ N, longitude 077°48′27″ W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.
11	July 4th	Cape Fear River, Southport, NC, Safety Zone.	All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N, longitude 078°01′18″ W, approximately 700 yards south of the waterfront at Southport, NC.
12	July 4th	Big Foot Slough, Ocracoke, NC, Safety Zone.	All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N, longitude 075°59′24″ W, approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Date	Location	Regulated area
13	August—1st Tuesday	New River, Jacksonville, NC, Safety Zone.	All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N, longitude 077°26′18″ W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina.
14	July 4th	Pantego Creek, Belhaven, NC, Safety Zone.	All waters on the Pantego Creek within a 600 foot radius of the launch site on land at position 35°32′35″ N, 076°37′46″ W.

* * * * *

Dated: February 11, 2013.

Steven H. Ratti,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 2013–04622 Filed 2–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.133B–9.]

Proposed Priority—National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for an RRTC on Community Living and Participation for Individuals with Psychiatric Disabilities. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on an area of national need. We intend the priority to contribute to improved community living and participation for individuals with psychiatric disabilities.

DATES: We must receive your comments on or before April 1, 2013.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by email, use the following address: *marlene.spencer@ed.gov.* You must include the phrase ''Proposed Priority for Community Living and Participation for Individuals with Psychiatric Disabilities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

This notice proposes one priority that NIDRR intends to use for one or more competitions in FY 2013 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award using this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 5133, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and

Rehabilitation Research Projects and Centers Program, is to achieve the goals of the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

RRTC on Community Living and Participation for Individuals with Psychiatric Disabilities.

Background:

NIDRR seeks to fund an RRTC that will generate new knowledge about community living and participation for individuals with psychiatric disabilities and serve as a national resource center for individuals with psychiatric disabilities[1] and their families.

Mental health disorders are one of the leading causes of disability in the United States (U.S. Department of Health and Human Services, 2010) with an estimated 13 million adults (approximately 1 in 17) diagnosed with a seriously debilitating mental illness. Individuals with psychiatric disabilities include individuals from diverse geographic, cultural, linguistic, and educational backgrounds, as well as people who may have additional physical, mental, or sensory disabilities (Fellinger, Holzinger, & Pollard, 2012; Gamm, Stone, & Pittman, 2010; Metraux, Caplan, Klugman, & Hadley, 2007).

Most individuals with psychiatric disabilities today live in community settings—a result of the deinstitutionalization movement of the 1960s to 1980s, the Americans with Disabilities Act of 1990, and the 1999 U.S. Supreme Court *Olmstead* decision (National Council on Disability, 2008; Nelson, 2010; Olmstead v. L.C., 527 U.S. 581 (1999); Salzer, Kaplan, & Atay, 2006). However, despite moving into community settings, many individuals with psychiatric disabilities continue to experience segregation, isolation, stigma, and unequal access in areas such as housing, employment, education, transportation, recreation, health, safety, and family life (National Council on Disability, 2008; Stephan, 2009).

Research has shown that individuals with psychiatric disabilities tend to live disproportionately in the poorest neighborhoods, often with limited access to community resources and in settings that do not adequately promote dignity and independence (Metraux, Brusilovskiy, Prvu-Bettger, Wong, & Salzer, 2012; Metraux, Caplan, Klugman, & Hadley, 2007; National Council on Disability, 2008; Nelson, 2010). Parents with psychiatric disabilities continue to struggle for custody rights of their children (National Council on Disability, 2012; Callow, Buckland, & Jones, 2011). Individuals with psychiatric disabilities from diverse cultural and linguistic backgrounds continue to encounter barriers and ineffective approaches to prevention, treatment, and community inclusion (Hernandez, Nesman, Mowery, Acevedo-Polakovich, & Callejas, 2009). Individuals with psychiatric disabilities also have high rates of unemployment, yet disability-related income support programs create disincentives to work (National Council on Disability, 2008). Finally, an important part of community living is staying safe during emergencies such as natural disasters and terrorist attacks, yet there is very little research on effective emergency preparedness, mitigation, response, or recovery for individuals with psychiatric disabilities (National Council on Disability, 2006; National Council on Disability, 2011).

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Definitions:

The research that is proposed under this priority must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For the purposes of this priority, the stages of research, which we published for comment on January 25, 2013 (78 FR 5330), are:

(i) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting

[1] Population studies use a variety of terms to describe psychiatric disabilities, including ''serious mental illness,'' ''mental health disorder,'' and ''psychiatric disability.'' In this notice we use the term ''psychiatric disability,'' except where quoting specific population studies.

new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities.

(ii) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed intervention study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(iii) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support ''scaling-up'' an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(iv) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. The project examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for an RRTC on Community Living and Participation for Individuals with Psychiatric Disabilities.

The RRTC must contribute to improving the community living and participation outcomes of individuals with psychiatric disabilities by:

(a) Conducting research activities in one or more of the following priority areas, focusing on individuals with psychiatric disabilities as a group or on individuals in specific disability or demographic subpopulations of individuals with psychiatric disabilities:

(i) Technology to improve community living and participation outcomes for individuals with psychiatric disabilities.

(ii) Individual and environmental factors associated with improved community living and participation outcomes for individuals with psychiatric disabilities.

(iii) Interventions that contribute to improved community living and participation outcomes for individuals with psychiatric disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in outcomes for individuals with psychiatric disabilities.

(iv) Effects of government practices, policies, and programs on community living and participation outcomes for individuals with psychiatric disabilities.

(v) Practices and policies that contribute to improved community living and participation outcomes for transition-aged youth with psychiatric disabilities;

(b) Focusing research on one or more specific stages of research. If the RRTC plans to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages must be clearly specified. These stages and their definitions are provided in the Definitions section of this notice; and

(c) Serving as a national resource center related to community living and participation for individuals with psychiatric disabilities, their families, service and support providers, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(i) Providing information and technical assistance to service providers, individuals with psychiatric disabilities and their representatives, and other key stakeholders;

(ii) Providing training, including graduate, pre-service, and in-service training, to rehabilitation service providers and other disability service providers, to facilitate more effective delivery of services to individuals with psychiatric disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities;

(iii) Disseminating research-based information and materials related to community living and participation for individuals with psychiatric disabilities;

(iv) Involving key stakeholder groups in the activities conducted under paragraph (a) in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years. Projects similar to the RRTC have been completed successfully, and the proposed priority will generate new knowledge through research. The new RRTC will generate, disseminate, and promote the use of new information that would improve outcomes for individuals with disabilities in the areas of community living and participation, employment, and health and function.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

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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.

Dated: February 25, 2013.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–04695 Filed 2–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Proposed Priority—National Institute on Disability and Rehabilitation Research—Traumatic Brain Injury Model Systems Centers Collaborative Research Project

[CFDA Number: 84.133A–7.]

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority under the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for a Disability and Rehabilitation Research Project (DRRP) on Traumatic Brain Injury Model Systems Centers Collaborative Research Projects. The Assistant Secretary may use this priority

for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend this priority to contribute to improved employment outcomes for individuals with disabilities.

DATES: We must receive your comments on or before April 1, 2013.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by email, use the following address: *marlene.spencer@ed.gov*. You must include the phrase ''Proposed Priority for Traumatic Brain Injury Model Systems Centers Collaborative Research Projects'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www2.ed.gov/legislation/FedRegister/other/2006-1/021506d.pdf.*

Through the implementation of the currently approved Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for a DRRP competition in FY 2013 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award using this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5133, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects

The purpose of NIDRR's DRRPs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, utilization, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains 1 proposed priority.

Traumatic Brain Injury Model Systems Centers Collaborative Research Projects.

Background:

The Centers for Disease Control and Prevention reports that approximately 1.7 million traumatic brain injuries (TBIs) were recorded annually between 2002 and 2006 (Faul et al., 2010). Of the persons incurring these TBIs, approximately 50,000 died, 275,000 were hospitalized, and 1.37 million were treated and released from emergency departments. These estimates do not include those individuals who sustained a TBI and failed to seek medical care, those treated in primary care settings, and those treated in military and Veterans Affairs hospitals. The Department of Defense reports that 235,046 service members were diagnosed with TBIs between 2000 and the end of 2011 (Defense and Veterans Brain Injury Center, 2012). The three leading causes of TBI for civilians are falls, motor vehicle accidents, and struck by/against events (i.e., events in which an individual collides with a moving or stationary object). The leading cause of TBI for military personnel is explosions/blasts (Sayer et al., 2008).

Persons who sustain moderate to severe TBIs often require intensive medical treatment. Forty percent of those hospitalized with nonfatal TBIs experience impairments that result in long-term disability (Corrigan, Selassie, & Orman, 2010). Common disabilities resulting from TBIs include problems

with cognition, sensory processing, communication, and behavioral or mental health (National Institute of Neurological Disorders and Stroke (NINDS), 2002). Some TBI survivors develop physical complications, some of which may not become apparent until long after the injury (NINDS, 2002).

There have been several initiatives in recent years to review and synthesize the available evidence on outcomes following TBI (e.g., Guillamondegui et al., 2011; Institute of Medicine (IOM), 2008) and on the effectiveness of rehabilitation treatments for TBI (e.g., Brasure et al., 2012; IOM, 2011). There are, however, significant challenges to conducting and synthesizing research on these topics such as the complexity of the condition, the significant number of factors that affect recovery in this population, and the complexity of the interventions (Brasure et al., 2012). Experts agree that there remains a strong need for future research to better establish the evidence base for rehabilitation interventions for this population (Brasure et al., 2012).

The Traumatic Brain Injury Model Systems (TBIMS) program was created by NIDRR in 1987 to demonstrate the benefits of a coordinated system of neurotrauma and rehabilitation care and to conduct innovative research on all aspects of care for those who sustain TBIs. For purposes of the TBIMS, TBI is defined as damage to brain tissue caused by an external mechanical force as evidenced by loss of consciousness or post-traumatic amnesia due to brain trauma or by objective neurological findings that can be reasonably attributed to TBI on physical or mental status examination. Both penetrating and non-penetrating wounds that fit these criteria are included, but primary anoxic encephalopathy is not.

NIDRR currently funds 16 TBIMS centers throughout the United States. These centers provide comprehensive systems of brain injury care to individuals who sustain TBIs and conduct TBI research, including clinical research and the analysis of standardized data in collaboration with other related projects. The mission of the TBIMS is to improve the lives of persons who experience TBIs, and to help their families and communities, by creating and disseminating new knowledge about the natural course of TBI and rehabilitation treatment and outcomes following TBI.

Since 1989, the TBIMS centers have collected and contributed information on common data elements for a centralized TBIMS database, which is maintained through a NIDRR-funded grant for a National Data and Statistical Center for the TBIMS. (Additional information on the TBIMS database can be found at *https://www.tbindsc.org.*) The TBI National Data and Statistical Center for the TBIMS coordinates data collection, manages the TBIMS database, and provides statistical support to the model systems projects. As of September 2012, the TBIMS centers have contributed 11,247 cases to the TBIMS database, with follow-up data extending 20 years after injury.

In 2003 and again in 2008, NIDRR leveraged the capacity of the TBIMS program by funding large-scale collaborative research projects that required participation across TBIMS centers. The collaborative projects funded in 2008 included a randomized controlled trial of the effectiveness of amantadine hydrochloride in treating post-TBI irritability and aggression and a practice-based study of factors that predict the effectiveness of rehabilitation interventions following TBI. Through the funding of this priority, the TBIMS program will continue to serve as a platform for multi-site research that contributes to evidence-based rehabilitation interventions and improves the lives of individuals with TBIs.

References

Brasure, M., Lamberty, G.J., Sayer, N.A., Nelson, NW., MacDonald, R., Ouellette, J., Tacklind, J., Grove, M., Rutks, I.R., Butler, M.E., Kane, R.L., Wilt, T.J. (2012). Multidisciplinary postacute rehabilitation for moderate to severe traumatic brain injury in adults. (Prepared by the Minnesota Evidence-based Practice Center under Contract No. 290–2007–10064–I.) AHRQ Publication No. 12–EHC101–EF. Rockville, MD: Agency for Healthcare Research and Quality. Retrieved September 6, 2012 from: *www.effectivehealthcare.ahrq.gov/reports/final.cfm.*

Corrigan, J.D., Selassie, A.W., Orman, J.A.L. (2010). The epidemiology of traumatic brain injury. Journal of Head Trauma Rehabilitation, 25(2), 72–80.

Defense and Veterans Brain Injury Center. (2012). DoD worldwide numbers for TBI (non-combat and combat injuries). Retrieved September 6, 2012 from: *www.dvbic.org/TBINumbers.aspx.*

Faul, M., Xu, L., Wald, M., et al. (March 2010). Traumatic brain injury in the United States: Emergency department visits, hospitalizations and deaths 2002–2006. Atlanta, GA: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control.

Guillamondegui, O.D., Montgomery, S.A., Phibbs, F.T., McPheeters, M.L., Alexander, P.T., Jerome, R.N., McKoy, J.N., Seroogy, J.J., Eicken, J.J., Krishnaswami, S., Salomon, R.M., Hartmann, K.E. (April 2011). Traumatic brain injury and depression. Comparative effectiveness review No. 25. (Prepared by Vanderbilt Evidence-based Practice Center under Contract No. 290–2007–10065–I.) AHRQ Publication No. 11–EHC017–EF. Rockville, MD: Agency for Healthcare Research and Quality. Retrieved September 6, 2012 from: *www.effectivehealthcare.ahrq.gov/reports/final.cfm.*

Institute of Medicine. (2008). Gulf War and health: Volume 7. Long-term consequences of traumatic brain injury. Washington, DC: The National Academies Press. Retrieved September 6, 2012 from: *www.iom.edu/Reports/2010/Gulf-War-and-Health-Volume-8-Health-Effects-of-Serving-in-the-Gulf-War.aspx.*

Institute of Medicine. (2011). Cognitive rehabilitation therapy for traumatic brain injury: Evaluating the evidence. Washington, DC: The National Academies Press. Retrieved September 6, 2012 from: *www.iom.edu/Reports/2011/Cognitive-Rehabilitation-Therapy-for-Traumatic-Brain-Injury-Evaluating-the-Evidence.aspx.*

National Institute of Neurological Disorders and Stroke (NINDS). (2002). Traumatic brain injury: Hope through research. Bethesda, MD: National Institute of Health. NIH Publication No. 02–2478. Retrieved September 6, 2012 from: *www.ninds.nih.gov/disorders/tbi/detail_tbi.htm.*

Sayer, N.A., Chiros, C.E., Sigford, B., et al. (2008). Characteristics and rehabilitation outcomes among patients with blast and other injuries sustained during the global war on terror. Archives of Physical Medicine and Rehabilitation, 89(1), 163–70.

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of Disability and Rehabilitation Research Projects (DRRPs) to serve as Traumatic Brain Injury Model Systems (TBIMS) multi-site collaborative research projects. To be eligible under this priority, an applicant must have received a grant under the TBIMS centers priority (see *https://www.federalregister.gov/articles/2012/06/11/2012-14115/disability-and-rehabilitation-research-projects-and-centers-program-traumatic-brain-injury-model*). Each TBIMS multi-site collaborative research project must be designed to contribute to evidence-based rehabilitation interventions and clinical practice guidelines that improve the lives of individuals with traumatic brain injuries (TBIs) through research, including the testing of approaches to treating TBIs or the assessment of the outcomes of individuals with TBIs. Each TBIMS multi-site collaborative research project must contribute to this outcome by—

(a) Collaborating with three or more of the NIDRR-funded TBIMS centers (for a

minimum of four TBIMS sites). In addition to the required TBIMS sites, applicants may also propose to include other TBI research sites that are not currently participating in the TBIMS program;

(b) Conducting multi-site research on questions of significance to TBI rehabilitation, using clearly identified research designs. The research must focus on outcomes in one or more of the following domains identified in NIDRR's Long-Range Plan, published in the **Federal Register** on February 15, 2006 (71 FR 8165): health and function, participation and community living, technology, and employment;

(c) Demonstrating the capacity to carry out multi-site collaborative research projects, including administrative capabilities, experience with management of multi-site research protocols, and demonstrated ability to maintain standards for quality and confidentiality of data gathered from multiple sites;

(d) Addressing the needs of people with disabilities, including individuals from traditionally underserved populations;

(e) Coordinating with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences; and

(f) Ensuring participation of individuals with disabilities in conducting TBIMS research.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years. Projects similar to the new DRRP have been completed successfully, and the new DRRP, established consistently with the proposed priority, is expected to improve the lives of individuals with disabilities and generate through research and development, disseminate,

and promote the use of new information that would improve the lives of individuals with disabilities who have experienced TBIs.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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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.

Dated: February 25, 2013.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–04699 Filed 2–27–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0887; FRL–9785–4]

Approval and Promulgation of Implementation Plans; Tennessee; Revisions to the Knox County Portion of the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP), submitted by the State of Tennessee Department of Environment and Conservation (TDEC) on August 19, 2009, August 22, 2012, and October 12, 2012. The SIP submittals include changes to Knox County Air Quality Management Regulations concerning *Open Burning, Permits* and *Regulation of Volatile Organic Compounds.* TDEC considers Knox County's SIP revisions to be as or more stringent than the Tennessee SIP requirements. EPA is proposing to approve the Knox County SIP revisions because the State has demonstrated that they are consistent with the Clean Air Act.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before April 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0887, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0887,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: February 12, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–04415 Filed 2–27–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 226 and 252

RIN 0750–AH85

Defense Federal Acquisition Regulation Supplement: Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs (DFARS Case 2012–D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National

Defense Authorization Act for Fiscal Year 2012, which requires DoD to take steps to encourage contractors to develop science, technology, engineering, and mathematics (STEM) programs.

DATES: *Comment date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before April 29, 2013, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012–D027, using any of the following methods:

Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2012–D027'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D027.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D027'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2012–D027 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 571–372–6090.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 (FY12), which requires DoD to encourage contractors to develop science, technology, engineering, and mathematics (STEM) programs. STEM programs are, programs or initiatives, either formal or informal, which encourage the pursuit of education and experience in the Science, Technology, Engineering, and Mathematics disciplines such as—

- Enhancing undergraduate, graduate, and doctoral programs in science, technology, engineering, and mathematics;
- Programming and curriculum development in elementary and secondary schools;
- Encouraging employees to volunteer in Title I schools in order to enhance STEM education and programs;
- Making personnel available to advise and assist STEM faculty at colleges and universities in the performance of STEM research and disciplines critical to the Department of Defense;
- Establishing partnerships between the offeror and historically black colleges and universities and minority institutions for the purpose of training students in the STEM disciplines;
- Awarding scholarships and fellowships for undergraduate and graduate programs, and establishing cooperative work-education programs in the STEM disciplines; or
- Conducting recruitment activities at historically black colleges and universities and minority institutions or offer internships or apprenticeships in the STEM disciplines.

II. 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. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule is required by section 862 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). The objective of this rule is to take steps to encourage contractors to develop science, technology, engineering, and math (STEM) programs. The legal basis for this rule is section 862 of the National Defense Authorization Act for Fiscal Year 2012.

This will apply to all DoD contractors, both large and small.

There are no reporting, recordkeeping or other compliance requirements associated with this rule. This rule only encourages contractors, to the maximum extent practicable, to develop science, technology, engineering, and mathematics (STEM) programs. The contractor is not required to develop STEM programs or to report on this activity.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD did not identify any significant alternatives that would satisfy the requirements of the statute. However, this rule does not impose any requirements on small business concerns.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2012–D027), in correspondence.

IV. 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).

List of Subjects in 48 CFR Parts 226 and 252

Government procurement.

Manuel Quinones

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 226 and 252 as follows:

PART 226—OTHER SOCIOECONOMIC PROGRAMS

■ 1. The authority citation for part 226 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add subpart 226.72 to read as follows:

Subpart 226.72—Encouragement of Science, Technology, Engineering, and Mathemathics (STEM) Programs

Sec.

226.7200 Scope of subpart.
226.7201 Definition.
226.7202 Applicability.
226.7203 Policy.
226.7204 Contract clause.

226.7200 Scope of subpart.

This subpart implements section 862 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81).

226.7201 Definition.

''*Science, Technology, Engineering, and Mathematics (STEM) Programs,''* as used in this subpart, means programs or incentives, either formal or informal, that encourage the pursuit of education and experience in the science, technology, engineering, and mathematics disciplines.

226.7202 Applicability.

This subpart applies to all solicitations and contracts.

226.7203 Policy.

DoD encourages contractors to undertake actions, to the maximum extent practicable, that—

(a) Enhance undergraduate, graduate, and doctoral programs in science, technology, engineering, and mathematics (referred to as ''STEM'' disciplines);

(b) Make investments, such as programming and curriculum development, in STEM programs within elementary and secondary schools;

(c) Encourage employees to volunteer in Title I schools in order to enhance STEM education and programs;

(d) Make personnel available to advise and assist faculty at such colleges and universities in the performance of STEM research and disciplines critical to the functions of DoD;

(e) Establish partnerships between the contractor and historically black colleges and universities and minority institutions for the purpose of training students in scientific disciplines;

(f) Award scholarships and fellowships, and establish cooperative work-education programs in scientific disciplines; or

(g) Conduct recruitment activities at historically black colleges and universities and other minority-serving institutions or offer internships or apprenticeships.

226.7204 Contract clause.

The contracting officer shall insert the clause at 252.226–70XX, Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs, in all solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 5. Section 252.226–70XX is added to read as follows:

252.226–70XX Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs.

As prescribed in 226.7204, insert the following clause:

Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs (Date)

(a) *Definition.*

''*Science, Technology, Engineering, and Mathematics (STEM) Programs,''* as used in this clause, means programs and or incentives, either formal or informal, that encourage the pursuit of education and experience in the science, technology, engineering, and mathematics disciplines.

(b) In accordance with section 862 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), the Contractor is encouraged to undertake actions, to the maximum extent practicable, that—

(1) Enhance undergraduate, graduate, and doctoral programs in science, technology, engineering, and mathematics (referred to as ''STEM'' disciplines);

(2) Make investments, such as programming and curriculum development, in STEM programs within elementary and secondary schools;

(3) Encourage employees to volunteer in Title I schools in order to enhance STEM education and programs;

(4) Make personnel available to advise and assist faculty at such colleges and universities in the performance of STEM research and disciplines critical to the functions of DoD;

(5) Establish partnerships between the contractor and historically black colleges and universities and minority institutions for the purpose of training students in scientific disciplines;

(6) Award scholarships and fellowships, and establish cooperative work-education programs in scientific disciplines; or

(7) Conduct recruitment activities at historically black colleges and universities and other minority-serving institutions or offer internships or apprenticeships.

(c) *Costs.* (1) The Contractor shall assume the responsibility for all the costs and investments in support of the STEM disciplines.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the support of the STEM disciplines. Any costs incurred for supporting the STEM disciplines are unallowable under this contract.

(End of clause)

[FR Doc. 2013–04352 Filed 2–27–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 231

RIN 0750–AH76

Defense Federal Acquisition Regulation Supplement; Unallowable Fringe Benefit Costs (DFARS Case 2012–D038)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to explicitly state that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 29, 2013, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2012–D038, using any of the following methods:

Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2012–D038'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D038.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D038'' on your attached document. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include DFARS Case 2012–D038 in the subject line of the message.

Fax: 571–372–6094.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS at 231.205–6 to implement the Director of Defense Pricing policy memo ''Unallowable Costs for Ineligible Dependent Health Care Benefits, dated February 17, 2012. The rule adds paragraph 231.205–6(m)(1) to explicitly state that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

FAR 42.709, which implements 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 4303, covers the assessment of penalties against contractors that include unallowable indirect costs in final indirect cost rate proposals or the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract. The section applies to all contracts in excess of $700,000, except fixed-price contracts without cost incentives or firm-fixed-price contracts for the purchase of commercial items. FAR 42.709–1(a) provides penalties that apply if the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR.

FAR 31.205–6(m) states that the costs of fringe benefits (which include employee health care benefits) are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor. Although fringe benefit costs that do not meet these criteria are not allowable, the FAR does not make them expressly unallowable. Specifying these fringe benefit costs as expressly unallowable in the DFARS makes it clear that the penalties at FAR 42.709–1 are applicable if a contractor includes such unallowable fringe benefit costs in a final indirect cost rate proposal or in the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

II. 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. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

DoD does 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 will only impact entities that are submitting covered proposals containing unallowable indirect fringe benefit costs. FAR 31.205–6(m) already states what fringe benefit costs are allowable. This rule provides explicit clarification that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable. If this rule takes effect, the penalties at FAR 42.709–1 will apply to any entity that includes such unallowable indirect charges in a final indirect cost rate proposal or the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract for a contract that exceeds $700,000.

At this time, DoD is unable to estimate the number of small entities to which this rule will apply. According to FPDS date for FY 2012, there were approximately 3000 contract awards exceeding $700,000 to small entities, excluding fixed-price contracts without cost incentives or any firm-fixed–price contract for the purchase of commercial items. We estimate that a very small percentage of the entities receiving these awards would be submitting covered proposals containing unallowable fringe benefit costs. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2012–D038) in correspondence.

IV. 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).

List of Subjects in 48 CFR Part 231.

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 231 as follows:

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 231 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 231.205–6 is amended by adding paragraph (m)(1) to read as follows:

231.205–6 Compensation for personal services.

* * * * *

(m)(1) Fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

[FR Doc. 2013–04353 Filed 2–27–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA–2007–27748]

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Public Listening Session

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public listening session.

SUMMARY: FMCSA announces that it will hold a public listening session to solicit ideas and information on the issue of entry-level training for drivers of commercial motor vehicles (CMVs). Specifically, the Agency solicits input on factors, issues, and data it should consider in anticipation of a rulemaking to implement the entry-level driver

training (ELDT) provisions in the Moving Ahead for Progress in the 21st Century Act. Wherever possible, the Agency requests that participants indicate whether the ideas identified are supported by research or data analyses, including cost/benefit considerations. The entire day's proceedings will be webcast.

DATES: The listening session will be held on Friday, March 22, 2013, from 1–5 p.m., ET. If all interested in-person participants have had an opportunity to comment, the session may conclude earlier.

ADDRESSES: The listening session will be held at the Kentucky Exposition Center, 937 Phillips Lane, Louisville, KY 40209, 502–367–5000, in Room C101. In addition to attending the session in person, the Agency offers several ways to provide comments, as enumerated below.

Internet Address for Live Webcast. FMCSA will post specific information on how to participate via the Internet on the FMCSA Web site at *www.fmcsa.dot.gov* one week before the listening session.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–27748 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Follow the on-line 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., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received, without change, to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you would like acknowledgment that the Agency received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on December 29, 2010 (75 FR 82132).

FOR FURTHER INFORMATION CONTACT: For information concerning the listening session or the live webcast, please contact Ms. Shannon L. Watson, Senior Advisor for Policy, FMCSA, (202) 385–2395.

If you need sign language assistance to participate in this ELDT listening session, contact Ms. Watson by Monday, March 18, 2013, to allow us to arrange for such services. FMCSA cannot guarantee that interpreter services requested on short notice will be provided.

SUPPLEMENTARY INFORMATION: The session will allow interested persons to present comments and relevant new research on ELDT. All comments will be transcribed and placed in docket FMCSA–2007–27748 for FMCSA's consideration.

I. Background

In the early 1980s, the Federal Highway Administration (FHWA) Office of Motor Carriers, predecessor to the FMCSA, determined that there was a need for technical guidance in the area of truck driver training. Research showed that few driver training institutions offered a structured curriculum or a standardized training program for any type of CMV driver. A 1995 study entitled ''Assessing the Adequacy of Commercial Motor Vehicle Driver Training'' (the Adequacy Report) concluded, among other things, that effective ELDT needs to include behind-the-wheel (BTW) instruction on how to operate a heavy vehicle.

In 2004, FMCSA implemented a training rule that focused on areas unrelated to the hands-on operation of a CMV, relying instead on the commercial driver's license (CDL) knowledge and skills tests to encourage training in the operation of CMVs. These current training regulations cover four areas: (1) Driver qualifications; (2) hours of service limitations; (3) wellness; and (4) whistleblower protection. In 2005, the U.S. Court of Appeals for the District of Columbia Circuit held that the Agency was arbitrary and capricious in promulgating the 2004 rule because it ignored the BTW training component aspect of the 1995 Adequacy Report.

On December 26, 2007, FMCSA published a Notice of Proposed Rulemaking (NPRM) seeking public comment on enhanced ELDT requirements (72 FR 73226). In the NPRM, FMCSA proposed revisions to the standards for mandatory training requirements for entry-level operators of CMVs in interstate operations who are required to possess a CDL. The proposal would apply to drivers who apply for a CDL beginning 3 years after a final rule goes into effect. Following that date, persons applying for new or upgraded CDLs would be required to successfully complete specified minimum classroom and BTW training from an accredited institution or program. The FMCSA proposed that the State driver-licensing agency would issue a CDL only if the applicant presented a valid driver training certificate obtained from an accredited institution or program. The Agency indicated the rulemaking would strengthen the Agency's ELDT requirements in response to the 2005 DC Circuit Court decision.

Since the publication of the NPRM, the Agency has completed its review of the public responses to the proposal and initiated new research concerning driver training. The Agency has also begun exploring new alternatives for mining Motor Carrier Safety Management Information System (MCMIS) data and Commercial Driver's License Information System (CDLIS) data to attempt to assess the safety performance of new CDL holders compared to that of more experienced CDL holders. In addition, in response to the public comments, the Agency has reexamined the regulatory options presented in the 2007 NPRM, as well as its estimates of the driver population who would be subject to the requirements. As a result, the Agency has concluded that additional stakeholder input will be useful in determining the most appropriate path forward for an ELDT rulemaking.

Section 32304 of MAP–21 requires that FMCSA issue final ELDT regulations by October 1, 2013, establishing minimum ELDT requirements for operators of CMVs. The listening session at the Mid-America Truck Show will provide an opportunity for motorcoach operators and other interested parties to share with FMCSA their ideas, especially as they relate to the training needs for

individuals seeking a passenger endorsement.

II. Meeting Participation and Information FMCSA Seeks From the Public

The listening session is open to the public. Speakers' remarks will be limited to 5 minutes each. No pre-registration is required. The public may submit material to the FMCSA staff at the session for inclusion in the public docket, FMCSA–2007–27748.

III. Alternative Media Broadcasts During and Immediately After the Listening Session on March 22, 2013

FMCSA will webcast the listening session on the Internet. The telephone access number and other information on how to participate via the Internet will be posted on the FMCSA Web site at *www.fmcsa.dot.gov* one week before the listening session.

FMCSA will docket the transcripts of the webcast and a separate transcription of the listening session that will be prepared by an official court reporter.

Issued on: February 20, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–04487 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2012–0007]

FHWA RIN 2125–AF48
FTA RIN 2132–AB05

Environmental Impact and Related Procedures

AGENCY: Federal Highway Administration, Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM provides interested parties with the opportunity to comment on proposed changes to the Federal Highway Administration (FHWA) and the Federal Transit Administration's (FTA) joint procedures that implement the National Environmental Policy Act (NEPA). The revisions are prompted by enactment of the *Moving Ahead for Progress in the 21st Century Act* (MAP–21). This NPRM proposes to add new categorical exclusions for projects within an existing operational right-of-way and projects receiving limited Federal funding, as described in MAP–21. The Agencies seek comments on the proposals contained in this document.

DATES: Comments must be received on or before April 29, 2013.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001;
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;
- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For FHWA: Kreig Larson, Office of Project Delivery and Environmental Review (HEPE), (202) 366–2056, or Jomar Maldonado, Office of the Chief Counsel (HCC), (202) 366–1373, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001. For FTA: Megan Blum, Office of Planning and Environment (TPE), (202) 366–0463, or Dana Nifosi, Office of Chief Counsel (TCC), (202) 366–4011. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2012, President Obama signed into law MAP–21 (Pub. L. 112–141, 126 Stat. 405), which contains new requirements that the Secretary of Transportation must meet. Sections 1316 and 1317 require the Secretary to promulgate regulations designating two types of actions as categorically excluded under 23 CFR 771.117(c) from the requirement under 40 CFR 1508.4 to prepare an environmental assessment (EA) or environmental impact statement (EIS): (1) Any project (as defined in 23 U.S.C. 101(a)) within an existing operational right-of-way and (2) any project that receives less than $5,000,000 of Federal funds or with a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. Since MAP–21's enactment, FTA established 23 CFR 771.118 and is therefore proposing to designate the two new categorical exclusions in section 771.118(c). The FHWA and FTA, hereafter referred to as the ''Agencies,'' are carrying out this rulemaking on behalf of the Secretary.

General Discussion of the Proposals

This NPRM proposes to revise 23 CFR 771.117(c) and 23 CFR 771.118(c) by designating new categorical exclusion (CE) provisions mandated by Congress under sections 1316 and 1317 of MAP–21. The Council on Environmental Quality's (CEQ) guidance, *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* (75 FR 75628, December 6, 2010), makes recommendations on procedures for establishing CEs in accordance with section 1507.3 of the CEQ NEPA implementing regulations. The CEQ guidance clarifies that the establishment and use of CEs called for by statute are governed by the terms of the specific legislation and subsequent interpretation by the agencies charged with the implementation of the statute (75 FR at 75631 (Footnote 6)). Sections 1316 and 1317 of MAP–21 describe the actions and projects that must be the subject of a rulemaking to categorically exclude those actions and projects from further NEPA analysis when there are no unusual circumstances, and this NPRM focuses on the Agencies' implementation and interpretations of those provisions. The Agencies are proposing two CEs that use the statutory language provided under sections 1316 and 1317 along with some clarifying language where the Agencies believe such language is needed to achieve the overall purposes of sections 1316 and 1317, or to avoid confusion in program administration.

Actions that are within the scope of designated CEs in 23 CFR 771.117(c) and 771.118(c) normally do not require any further NEPA analysis by the Agencies. Such actions only need a record in the project file that confirms the action fits the description of the CE and, in accordance with 23 CFR 771.117(b) and 771.118(b), that no unusual circumstances exist that require environmental studies to determine whether the CE classification is proper or whether further NEPA analysis and documentation is necessary. Examples

of unusual circumstances—which are similar to extraordinary circumstances in the CEQ NEPA implementing regulations—include significant environmental impacts, substantial controversy on environmental grounds, significant impacts on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act (NHPA), or inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action (23 CFR 771.117(b)(1)–(4); 23 CFR 771.118(b)(1)–(4)).

For the use of the proposed CEs, as for the use of any CE, the action must also comply with NEPA requirements relating to connected actions and segmentation (*see, e.g.,* 40 CFR 1508.25, and 23 CFR 771.111(f)). The Agencies recognize that projects cannot be improperly segmented. The action must have independent utility, connect logical termini when applicable (*i.e.,* linear facilities), and not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. In addition, even though a CE may apply to a proposed action, thereby satisfying NEPA requirements, all other requirements applicable to the activity under other Federal and State laws and regulations still apply, such as the Clean Water Act, Clean Air Act, NHPA, and the Endangered Species Act. Some of these requirements may require the collection and analysis of information, or coordination and consultation efforts that are independent of the Agencies' NEPA CE determination. Also, some of these requirements may involve actions by other Federal agencies (*e.g.,* approvals or issuance of permits) that could trigger a different level of NEPA analysis for those Federal agencies. These requirements must be met before the action proceeds regardless of the availability of a CE for the transportation project under 23 CFR part 771.

The first proposed CE, pursuant to section 1316 of MAP–21, will apply to projects, as defined in section 101(a) of title 23, U.S.C., that occur within an existing operational right-of-way. Section 101(a) of title 23, U.S.C., defines ''project'' to mean ''any undertaking eligible for assistance under [title 23].'' This definition includes capital transit projects that are eligible for financial assistance under title 23, U.S.C., through the eligibility criteria under the Surface Transportation Program and Congestion Mitigation and Air Quality Improvement Program, which specifically include all capital transit projects eligible for funding under chapter 53 of title 49, U.S.C. It also includes projects carried out under the Federal Lands Highway programs. Section 1316(b) of MAP–21 defines ''operational right-of-way'' as ''all the real property interests acquired for the construction, operation, or mitigation of a project (as defined in section 101(a) of title 23, U.S.C.), including the locations of the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway.''

Consistent with this definition, proposed paragraph (c)(22) of 23 CFR 771.117 and proposed paragraph (c)(12) of 23 CFR 771.118 would include conditions that require the action's scope be within the geographic area previously permanently acquired, needed, and used for the construction, mitigation, operation, and maintenance of an existing transportation facility, which includes any facility eligible for funding under title 23, U.S.C., or chapter 53 of title 49, U.S.C. The geographic area under section 771.117(c)(22) includes the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. The Agencies also propose to include analogous examples of infrastructure common to transit projects, and propose to define the geographic area under section 771.118(c)(12) to include roadway, fixed guideway, culverts, drainage, clear zone, traffic control signage, landscaping, substations, and any park and ride lots with direct access to an existing transit facility. Right-of-way previously acquired that is not being used for the mitigation, operation, or maintenance of an existing transportation facility is not considered to be part of the operational right-of-way. Actions in right-of-way acquired for corridor preservation or future corridor expansion are not eligible if the corridors are not in operational use at the time of the CE application.

For all actions processed under these proposed CEs, the project record would need to demonstrate that it fits within the conditions specified in the proposed CE language and that no unusual circumstances exist that require environmental studies to determine whether the CE classification is proper or further NEPA analysis and documentation is required (see sections 771.117(b) and 771.118(b)).

The second proposed CE, pursuant to section 1317 of MAP–21, will apply to projects that receive less than $5,000,000 of Federal funds or with a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. The proposed paragraph (c)(23) of 23 CFR 771.117 and proposed paragraph (c)(13) of 23 CFR 771.118 would apply to projects that receive funding under title 23, U.S.C., or chapter 53 of title 49, U.S.C., but the Federal funding thresholds include any Federal funding regardless of source. These CEs would apply to projects that only involve Agency funding decisions and actions. These CEs would not be applicable to projects that require other Agency actions (such as Interstate access approvals for FHWA), even if that approval action is for a project with a total project cost that meets the parameters of the CEs. The project record would need to demonstrate that the action fits within one of the funding thresholds for this CE and that no unusual circumstances exist. The project record would also need to demonstrate that the action has independent utility, connects logical termini when applicable (*i.e.,* linear facilities), and does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Section-by-Section Discussion of the Proposals

In General

This NPRM contains four proposed additions to the regulations at 23 CFR part 771. The CEs proposed for sections 771.117(c)(22) and 771.118(c)(12) are identical, as are the CEs proposed for sections 771.117(c)(23) and 771.118(c)(13). The identical proposals will be described in this preamble together for ease of reading.

Proposed Section 771.117(c)(22) and 771.118(c)(12) Categorical Exclusion

Two new sections would be added to 23 CFR part 771 to implement MAP–21 section 1316: sections 771.117(c)(22) for FHWA and 771.118(c)(12) for FTA. Section 1316 of MAP–21 requires the Secretary to promulgate regulations that designate as categorically excluded projects, as defined in section 101(a) of title 23, U.S.C., occurring within the existing operational right-of-way. Section 101(a) of title 23, U.S.C., defines ''project'' to mean ''any undertaking eligible for assistance under [title 23].'' This definition includes transit projects that are eligible for financial assistance under title 23, U.S.C. It also includes projects carried out under the Federal Lands Highway programs.

''Operational right-of-way'' is defined in section 1316(b) of MAP–21 as ''all real property interests acquired for the construction, operation, or mitigation of a project (as defined in section 101(a) of title 23, U.S.C.), including the locations of the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway.'' The Agencies are proposing to include regulatory language to clarify the meaning of the statutory definition in the context of the Agencies' programs. This NPRM proposes to define the ''operational right-of-way'' as those portions of the existing right-of-way that have been disturbed for an existing transportation facility that is in operational use, including areas that are regularly maintained such as clear zones and landscaping. ''Transportation facility'' is used in the CE to establish that the existing facility or structure must be related to surface transportation. The use of the phrase is intended to be used in its plain meaning, and is specifically not intended to be limited to the term ''Transportation facilities'' as defined in 23 CFR 973.104, which is applicable to the Indian Reservation Roads Program. The proposed language provides that the ''operational right-of-way'' includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage) and other areas regularly maintained, such as clear zones, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. Under the proposal, ''operational right-of-way'' would not include portions of the existing right-of-way that are not currently being used or regularly maintained for transportation purposes.

Many of these projects could be categorically excluded under CEs already designated in sections 771.117 and 771.118. Examples of projects that would, absent unusual circumstances, be categorically excluded under existing provisions include construction of bicycle and pedestrian lanes, paths, and facilities, landscaping, track and railbed maintenance and improvements, and installation of traffic control and detector devices. The new CEs (sections 771.117(c)(22) and 771.118(c)(12)), when finalized, could apply to projects that involve a change from one transportation use to another or an increase in facility capacity, if the change does not involve unusual circumstances.

Proposed Sections 771.117(c)(23) and 771.118(c)(13) Categorical Exclusion

The Agencies propose to add new sections 771.117(c)(23) and 771.118(c)(13) to implement MAP–21 section 1317, which requires the Secretary to promulgate regulations that designate as categorically excluded actions receiving limited Federal funds. Specifically, section 1317(1) of MAP–21 provides for the designation of the CE for ''any project—(A) that receives less than $5,000,000 of Federal funds; or (B) with a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.''

The Agencies propose to use the phrase ''Federally funded projects'' to clarify that the project must receive some amount of Federal funding to be eligible for these CEs. This interpretation is consistent with the title in section 1317, the use of the term ''funds'' in section 1317(1)(A)–(B), and the statute's Conference Report indicating Congress intended the CE to cover those actions that receive limited Federal funding (House Report 112–557, 112th Congress, at 598 (June 28, 2012)). This term includes, but is not limited to, projects receiving Federal grants, loans, loan guarantees, lines of credit, and projects receiving funds authorized for the Federal Lands Access Program, the Federal Lands Transportation Program, and the Tribal Transportation Program. The Federal funding thresholds take into account any Federal funding to cover the capital costs of the undertaking regardless of source, but exclude Federal funds for operating costs and expenses that may be provided to the facility.

The Agencies interpret the section 1317(1)(A)–(B) provisions on levels of Federal funding and on estimated project costs as requiring consideration during the NEPA process of whether the projected level of Federal funding and the estimated project cost, as applicable, are reasonably supported by the facts. A change occurring after the NEPA determination, while there is still an FHWA and/or FTA action to be taken, that raises the level of Federal funding beyond the thresholds specified in the CEs will trigger re-evaluation under 23 CFR 771.129 and possible preparation of additional NEPA documentation. Section 771.129(c) requires the ''applicant,'' as defined in 23 CFR 771.107(f), to consult with the appropriate ''Administration,'' as defined in 23 CFR 771.107(d), prior to requesting any major approvals or grants (including changes in project plans, specifications, or estimates) to establish whether the CE designation remains valid for the requested Agency action.

The proposed regulatory language includes the phrase ''that do not require Administration actions other than funding'' to clarify that the CE is limited to situations where the only Agency action involved is funding. ''Administration action'' is defined in 23 CFR 771.107(c) as the approval by the Agencies of the applicant's request for Federal funds for construction, and approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment in Federal funds. Expanding the CE to apply to federally funded projects that involve other Agency action, even when the funds are within the limits established by Congress, would be beyond the statutory limits of the CE. For example, a project that would receive Federal funding at or below the specified limits but that also would need an Interstate access approval from FHWA under section 111(a) of title 23, U.S.C., could not be processed as a CE under the proposed rule. Projects requiring Agency action other than Agency funding may still be eligible for a CE determination under other CEs in sections 771.117 or 771.118.

For the use of the proposed CEs, as for the use of any CE, the action must also comply with NEPA requirements relating to connected actions and segmentation (*see, e.g.,* 40 CFR 1508.25, and 23 CFR 771.111(f)).

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the Agencies will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the NPRM comment period.

Executive Orders 12866 and 13563 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Agencies have determined preliminarily that this action would not be a significant regulatory action under section 3(f) of Executive Order 12866 nor would it be significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11032). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It is anticipated that the economic impact of this rulemaking would be minimal. The changes that this rule proposes are requirements mandated by MAP–21 intended to streamline environmental review by making changes in the Agencies' environmental review procedures.

The activities this NPRM proposes to add to 23 CFR 771.117(c)(22) and (c)(23) and 771.118(c)(12) and (c)(13), which are described in section 1316 and 1317, are inherently limited in their potential to cause significant environmental impacts because the use of the CEs is subject to the unusual circumstances provision in 23 CFR 771.117(b) and 771.118(b). That provision requires appropriate environmental studies, and may result in the reclassification of the proposal for evaluation of the project through an EA or EIS, if the proposal involves potentially significant or significant environmental impacts. These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required. The Agencies anticipate that the changes in this proposal would enable projects to move more expeditiously through the Federal review process and would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA and for ensuring that projects are built in an environmentally responsible manner. The vast majority of FHWA actions presently are determined to be CEs. In a recent survey conducted on CE usage, carried out pursuant to MAP–21 section 1318, responding State departments of transportation reported that 90 percent to 99 percent of their projects qualified for CE determinations. Approximately 90 percent of FTA's actions are within the scope of existing CEs (specifically, sections 771.118(c) and (d)). The Agencies anticipate the percentages may increase with the promulgation of the proposed CEs. The FHWA and FTA are not able to quantify the economic effects of these changes because the types of projects that will be proposed for FHWA and FTA funding and their potential impacts are unknown at this time, particularly given changes to the programs in MAP–21. The Agencies request comment, including data and information on the experiences of project sponsors, on the likely effects of the changes being proposed.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the Agencies have evaluated the effects of this proposed rule on small entities and anticipate that this action would not have a significant economic impact on a substantial number of small entities. The proposed revision could streamline environmental review and thus would be less than any current impact on small business entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the Agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the Agencies have determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

Executive Order 13175 (Tribal Consultation)

The Agencies have analyzed this action under Executive Order 13175, and believe that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The Agencies have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agencies have determined that this action is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the Agencies solicit comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The Agencies have determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a), 77 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/enviornment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, both Agencies have issued additional documents relating to administration of the Executive Order and the DOT Order. On June 14, 2012, the FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*). The FTA also issued an update to its EJ policy, *FTA Policy Guidance for Federal Transit Recipients,* 77 FR 42077 (July 17, 2012) (available online at *www.fta.dot.gov/legislation_law/12349_14740.html*).

The Agencies have evaluated this proposed rule under the Executive Order, the DOT Order, the FHWA Order, and the FTA Circular. The Agencies have determined that the proposed new CEs, if finalized, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations. This action proposes to add a provision to the Agencies' NEPA procedures under which they may decide in the future that a project or program does not require the preparation of an EA or EIS. The proposed rule itself has no potential for effects until it is applied to a proposed action requiring approval by the FHWA or FTA.

At the time the Agencies apply the CE proposed by this rulemaking, the Agencies would have an independent obligation to conduct an evaluation of the proposed action under the applicable EJ orders and guidance to determine whether the proposed action has the potential for EJ effects. The rule would not affect the scope or outcome of that EJ evaluation. In any instance where there are potential EJ effects and the Agencies were to consider applying one of the CEs proposed by this rulemaking, public outreach under the applicable EJ orders and guidance would provide affected populations with the opportunity to raise any concerns about those potential EJ effects. See DOT Order 5610.2(a), FHWA Order 6640.23A, and FTA Policy Guidance for Transit Recipients (available at links above). Indeed, outreach to ensure the effective involvement of minority and low income populations where there is potential for EJ effects is a core aspect of the EJ orders and guidance. For these reasons, the Agencies also have determined that no further EJ analysis is needed and no mitigation is required in connection with the designation of the proposed CEs.

Executive Order 13045 (Protection of Children)

The Agencies have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agencies certify that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The Agencies do not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an EIS; those that normally require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. The CEs are one part of those agency procedures, and therefore establishing CEs does not require preparation of a NEPA analysis or document. Agency NEPA procedures are generally procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing CEs does not require NEPA analysis and documentation was upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulation Identification Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Public transit, Recreation areas, Reporting and record keeping requirements.

In consideration of the foregoing, the Agencies propose to amend title 23, Code of Federal Regulations part 771 and title 49, Code of Federal Regulations part 622 as follows:

Title 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 1. The authority citation for part 771 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303, 5301 and 5323; 40 CFR Parts 1500–1508; 49 CFR 1.48(b) and 1.51; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; Pub. L. 112–141, 126 Stat. 405, sections 1315, 1316 and 1317.

■ 2. Amend § 771.117 by adding paragraphs (c)(22) and (c)(23) to read as follows:

§ 771.117 FHWA categorical exclusions.

* * * * *

(c) * * *

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. The operational right-of-way includes those portions of the right-of-way that have been disturbed for an existing transportation facility or are regularly maintained for transportation purposes. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, substations, etc.) and other areas regularly maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, or park and ride lots with direct access to an existing transit facility. It does not include portions of the existing right-of-way that are not currently being used or not regularly maintained for transportation purposes.

(23) Federally funded projects that do not require Administration actions other than funding, and:

(i) That receive less than $5,000,000 of Federal funds; or

(ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.

* * * * *

■ 3. Amend § 771.118 by adding paragraphs (c)(12) and (c)(13) to read as follows:

§ 771.118 FTA categorical exclusions.

* * * * *

(c) * * *

(12) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. The operational right-of-way includes those portions of the right-of-way that have been disturbed for an existing transportation facility or are regularly maintained for transportation purposes. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, substations, etc.) and other areas regularly maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, or park and ride lots with direct access to an existing transit facility. It does not include portions of the existing right-of-way that are not currently being used or not regularly maintained for transportation purposes.

(13) Federally funded projects that do not require Administration actions other than funding, and:

(i) That receive less than $5,000,000 of Federal funds; or

(ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.

* * * * *

Title 49—Transportation

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 4. The authority citation for part 622 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 49 U.S.C. 303, 5301 and 5323; 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.51; and Pub. L. 112–141, 126 Stat. 405, sections 1315, 1316 and 1317.

Issued on: February 22, 2013.

Victor M. Mendez,

Administrator, Federal Highway Administrator.

Peter Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. 2013–04678 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 121204680–3387–01]

RIN 0648–XC387

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Humphead Wrasse as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding, request for information.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list the humphead wrasse (*Cheilinus undulatus*) as threatened or endangered and designate critical habitat under the Endangered Species Act (ESA). We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Accordingly, we will conduct a review of the status of this species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, for 60 days we are soliciting information pertaining to this species from any interested party.

DATES: Information and comments on the subject action must be received by April 29, 2013.

ADDRESSES: You may submit information, identified by the code NOAA–NMFS–2013–0001, by any of the following methods:

- *Electronic Submissions:* Submit all electronic information via the Federal eRulemaking Portal *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0001,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* NMFS, Pacific Islands Regional Office, Regulatory Branch Chief, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.
- *Hand delivery:* You may hand deliver written information to our office during normal business hours at the street address given above.

Instructions: All information received is a part of the public record and may be posted to *http://www.regulations.gov* without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous submissions. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Krista Graham, NMFS Pacific Islands Regional Office, 808–944–2238; or Lisa Manning, NMFS Office of Protected Resources, 301–427–8466.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2012, we received a petition from the WildEarth Guardians to list the humphead wrasse (*Cheilinus undulatus*) as threatened or endangered under the ESA and to designate critical habitat concurrent with the listing under the ESA. Copies of this petition are available from us (see **ADDRESSES,** above).

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of

receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish the finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned, which includes conducting a comprehensive review of the best available scientific and commercial information. Within 12 months of receiving the petition, we must conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a significantly more thorough review of the available information, a ''may be warranted'' finding at the 90-day stage does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a ''species,'' which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA–U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (''DPS Policy''; 61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively; 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, the determination of whether a species is threatened or endangered shall be based on any one or a combination of the following five section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. When evaluating whether substantial information is contained in a petition, we must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

At the 90-day stage, we evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. Conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion, then we assess the potential significance of that negative response.

Humphead Wrasse Species Description

The humphead wrasse is a large, long-lived, slow growing, and naturally rare species of the Indo-West Pacific. Known by several other common names, including Napoleon wrasse, giant wrasse, and Maori wrasse, it is the largest species within its family, Labridae; and one of the largest of all reef fishes (Donaldson and Sadovy, 2001). Humphead wrasse are thought to reach sizes of over 200 cm; however, records of fish greater than 150 cm (fork length) are apparently lacking (Choat *et al.,* 2006). Humphead wrasse reach sexual maturity at 5–7 years and 35–85 cm total length (TL), and can live at least 30 years (Sadovy de Mitcheson *et al.,* 2010; Sadovy *et al.,* 2003; Donaldson and Sadovy, 2001). The humphead

wrasse is a carnivorous predator with a diet that includes a variety of reef-associated animals, including molluscs, crustaceans, sea urchins, fishes, and starfishes—including the toxic crown-of-thorns starfish (Donaldson and Sadovy, 2001). They are generally solitary, but can occur in small groups and are known to congregate to form spawning aggregations. Spawning activity is tidally influenced and, depending on location, occurs during multiple months or every month of the year (Colin, 2010; Sadovy *et al.,* 2003).

Humphead wrasse undergo changes in body form, color, and sex as they grow and mature. Small juveniles are pale with black markings; larger juveniles become pale green with black markings. Adults are a striking blue/green with large scales, intricate markings around the eyes, and a yellow margin on the caudal fin. Large adults also develop a large bump on their forehead and thickened, prominent lips. As with other wrasses and some other reef fish species, humphead wrasse are protogynous hermaphrodites, meaning males start out as females and undergo a sexual transition (Choat *et al.,* 2006; Sadovy *et al.,* 2003).

The humphead wrasse ranges throughout the tropical and sub-tropical Indo-Pacific, from Egypt, the eastern coast of Africa, and Madagascar, throughout all of Southeast Asia; north to southern Japan; south to northern Australia; and eastward to Fiji, the Marshall Islands, and the Cook Islands (Russell, 2004; Sadovy *et al.,* 2003). Within U.S. waters, humphead wrasse occur in American Samoa, Guam, Commonwealth of the Northern Mariana Islands (CNMI), and the Line Islands (Russell, 2004; Sadovy *et al.,* 2003). Within this range, distribution of the fish is patchy.

Humphead wrasses are typically associated with well-developed coral reefs. Adult humphead wrasse are thought to prefer steep outer reef edges, channels, and lagoon reef slopes at about 2–60 m depth (Sadovy *et al.,* 2003; Donaldson and Sadovy, 2001). Small, post-settled humphead wrasse have been observed in branching hard and soft corals, coral rubble, and seagrasses (Tupper, 2007; Sadovy *et al.,* 2003). Juveniles are more cryptic than adults and are often associated with denser coral reefs and thickets, coral rubble, bushy macroalgae, and seagrasses (Tupper, 2007; Sadovy *et al.,* 2003). Juveniles typically occur inshore, while larger fish are more common in deeper, outer reefs or lagoons (Sadovy *et al.,* 2003).

Analysis of the Petition

The petition contains a detailed narrative justification for the recommended measure and provides information on the species' taxonomy, geographic distribution, habitat characteristics, population status and trends, and threats. The petition is accompanied by appropriate supporting documentation. Below is a synopsis of our analysis of the information provided in the petition and readily available in our files.

Humphead Wrasse Status

The petitioner acknowledges that data on total numbers, globally or nationally, are not available for this species; however, humphead wrasse densities are provided by several studies cited in the petition. In general, these studies indicate that densities of humphead wrasse are low (less than 20 per 10,000 square meters), even within preferred habitats (Gillet, 2010; Sadovy *et al.,* 2003). Biennial surveys conducted by NOAA's Pacific Islands Fisheries Science Center (PIFSC) during 2002–2012 at 32 U.S. Pacific islands indicate that the species is not common at any of the survey sites (PIFSC, unpublished data). The exception is Wake Atoll, where humphead wrasse are more abundant and more frequently encountered in surveys (PIFSC, unpublished data; NOAA, 2009). Wake Atoll is very isolated, relatively pristine and, as of 2009, part of the Pacific Remote Islands Marine National Monument, where commercial fishing is banned out to 50 nautical miles.

The petitioner cites studies that show humphead wrasse densities are lower in areas that are fished, and very low or zero in areas with high fishing pressure and/or large human populations (Gillet, 2010; Sadovy *et al.,* 2003). Results of 24 underwater visual census surveys from 11 range states were reviewed by Sadovy *et al.* (2003) and show that there is a decline in both density and body size of humphead wrasse in areas of higher fishing pressure. Landings data are limited, but severe declines in humphead wrasse landings have been reported from some locations, such as Borneo and Malaysia, over relatively short time scales (Scales *et al.,* 2007; Sadovy *et al.,* 2003). Interviews conducted in various locations throughout the species' range, including CNMI, Philippines, Australia, Malaysia and Fiji, indicate widely shared perceptions among elder fishers that abundance of humphead wrasse has declined and that this decline is largely attributed to fishing pressure (CNMI Final Grant Report, 2010; Sadovy *et al.,* 2003). Humphead wrasse are also considered extirpated or nearly extirpated from some locations at the edge of its range, including parts of Fiji, southwestern Indian Ocean and the South China Sea (Sadovy *et al.,* 2003).

Threats to Humphead Wrasse

The petition identifies overutilization and inadequate protections as major threats to this species. Other threats identified in the petition but not explicitly linked to humphead wrasse status include destruction and degradation of coral reef habitat, human population growth, climate change, and ocean acidification. The petitioner also cites natural rarity as a factor contributing to the species' risk of extinction.

The humphead wrasse is highly prized within the Indo-Pacific region as a luxury food fish, primarily in Hong Kong, Taiwan, and Singapore (Sadovy *et al.,* 2003; Erdmann and Pet-Soede, 1997), and garners the highest price of all fishes in the live reef fish food trade (Sadovy de Micheson *et al.,* 2010). Demand for this fish is expected to remain high, and fishing efforts are likely to continually extend into new areas as local populations are fished out (Sadovy *et al.,* 2003; Burke *et al.,* 2002; Barber and Pratt, 1997).

The petitioner provides references that suggest this species is vulnerable to fishing pressure. For example, Scales *et al.* (2007) documented exponential declines in relative abundance of humphead wrasse in under a decade in northern Borneo and suggest that serial depletion is occurring. Additionally, the humphead wrasse has been noted to experience a greater than 50 percent decline over the last three generations in locations where data are available (Russell, 2004). This decline is predicted to continue or even accelerate with the expected growth of the live reef fish food trade (Russell, 2004). Also, the international live-fish fishery appears to be largely focused on juveniles (fish under 500 mm TL), which are then held in cages until they grow to market size (Sadovy de Micheson *et al.,* 2010). This practice exacerbates the potential for overexploitation because fish are removed from the wild prior to reproducing.

The petition discusses how, in addition to other general threats to coral reefs, humphead wrasse fishing practices are posing a threat to humphead wrasse habitat. Stunning and capturing humphead wrasse by applying sodium cyanide to reefs, a common method of live-capture, damages corals and other reef organisms (Bryant *et al.,* 1998; Barber and Pratt,

1997). This practice is prohibited in many areas but is still used in some areas for collecting humphead wrasse for the live reef fish food trade (Sadovy *et al,* 2003; Bryant *et al.,* 1998; Barber and Pratt, 1997).

The petition proposes that exploitation threats to this species are not being addressed, a result of the lack of protective measures in most countries and the inadequacy of regulatory mechanisms where they do exist. Although this species receives some protections through local fishing restrictions, Sadovy *et al.* (2003) indicates that, with few exceptions, protective legislation is largely ineffective due to the lack of enforcement or permitted exemptions. Additionally, despite international trade concerns and protections granted with the species' listing in Appendix II of the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES), there is a body of evidence indicating illegal, unregulated, and unreported fishing and trade of the humpback wrasse (CITES Workshop Report, 2010).

Petition Finding

After reviewing the petitioner's information and the information in our files, we have determined there is substantial information indicating that the petitioned action may be warranted. The low natural densities and other life history characteristics of humphead wrasse, coupled with evidence of declines in abundance, overutilization, and apparent inadequacy of existing regulatory mechanisms and protections for this species and its coral reef habitat are cause for concern. Because we have found that substantial information was presented on the above factors, we will commence a status review of the species. During our status review, we will fully address all five of the factors set out in section 4(a)(1) of the ESA. At the conclusion of the status review, we will determine whether the petitioned action is warranted. As previously noted, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Information Solicited

As required by section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(2)), we are to commence a review of the status of the species and make a determination within 12 months of receiving the petition as to whether the petitioned action is warranted. We intend that any final action resulting from this review be as accurate and as effective as possible. Therefore, we are opening a 60-day public comment period to solicit information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of humphead wrasse throughout its range including: (1) Historical and current abundance, distribution, and population trends; (2) biological information (life history, population genetics, population connectivity, etc.); (3) status of historical and current habitat, including spawning aggregation sites; (4) regulatory mechanisms and management measures, including enforcement thereof, designed to manage fishing or protect habitats; (5) any current or planned activities that may adversely impact the species; and (6) ongoing or planned efforts to protect and restore the species and their habitats. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents. Section 4(b)(1)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.11(b)) require that a listing determination be made solely on the basis of the best scientific and commercial data, without consideration of possible economic or other impacts of the determination. During the 60-day public comment period we are seeking information related to the status of humphead wrasse throughout its range.

Peer Review

On July 1, 1994, NMFS, jointly with the USFWS, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all ''influential scientific information'' and ''highly influential scientific information'' disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered ''influential scientific information,'' we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other native groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

A complete list of references is available upon request from the Pacific Islands Regional Office, Protected Resource Division (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 22, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–04718 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 40

Thursday, February 28, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 22, 2013.

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.

Comments regarding this information collection received by April 1, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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 Agricultural Statistics Service

Title: Agricultural Prices.

OMB Control Number: 0535–0003.

Summary of Collection: The Agricultural Prices surveys provide data on the prices received by farmers and prices paid for production goods and services. This information is needed by the U.S. Department of Agriculture, National Agriculture Statistics Service (NASS) for the following purposes: (a) To compute Parity Prices in accordance with requirements of the Agricultural Adjustment Act of 1938 as amended (Title III, Subtitle A, Section 301a, (b) to estimate value of production, inventory values, and cash receipts from farming, (c) to determine the level for farmer owned reserves, (d) to provide guidelines for Risk Management Agency price selection options, (e) to determine Federal disaster prices to be paid, and (f) to determine the grazing fee on Federal lands. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: The NASS price program computes annual U.S. weighted average prices received by farmers for grain and beans, corn, sugar, rice, cotton, peanuts, pulse crops and oilseeds based on monthly marketing. Prices estimates are used by many Government agencies as a general measure of commodity price changes, economic analysis relating to farm income and alternative marketing policies, and for disaster and insurance payments.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 53,530.

Frequency of Responses: Reporting: On occasion; Monthly; Annually; Biennially.

Total Burden Hours: 25,273.

National Agricultural Statistics Service

Title: Vegetable Surveys.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production, prices and disposition. The Vegetable Surveys Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. The vegetable program has two types of utilization: some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed in August for acreage contracted and estimated yield. In late November, processors are asked for final acreage harvested, production, and value. The fresh market vegetable program consists of specialized growers who are surveyed at the conclusion of the growing season for estimates of crop production. Producers of onions, strawberries, and asparagus are surveyed in August to obtain forecasted acreage and production. NASS will collect information using surveys.

Need and Use of the Information: NASS will collect information to estimate acreage intended to plant, acreage planted, acreage harvested, yield/production, price, and utilization for the various crops. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 33,064.

Frequency of Responses: Reporting: Annually; Other (seasonally).

Total Burden Hours: 9,066.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–04644 Filed 2–27–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest; California; Elk Late-Successional Reserve Enhancement Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to evaluate and disclose the predicted effects of the Elk Late-Successional Reserve Enhancement project, which would treat natural

stands and plantations on approximately 2,930 acres to reduce the current and future risk of large-scale disturbance events within early, mid and late-successional habitat within the Elk Flat Late-Successional Reserve and nearby stands. Additional benefits from risk reduction treatments include increasing the resilience and promoting continued development and connectivity of late-successional forest habitat within the Elk Flat Late-Successional Reserve. Objectives include improving forest health; increasing resiliency to natural events such as drought, insect and disease infestations and high severity wildfire; and restoring unique habitats. Forest stand treatments would be completed using commercial and non-commercial thinning and regeneration prescriptions. Fuels reduction would be completed using mechanical and hand methods and prescribed fire. Proposed road actions include maintenance and reconstruction of National Forest System roads, construction of temporary roads to complete project activities, and closure and decommissioning of National Forest System roads and existing routes. The project is located in Siskiyou County, California on the McCloud Ranger District of the Shasta McCloud Management Unit, Shasta-Trinity National Forest. The project's legal location is: Township 40 North, Range 1 West, Sections 4 and 5; and Township 41 North, Range 1 West, Sections 27 to 34, Mt. Diablo Meridian. The project area is approximately nine miles northeast of the town of McCloud, California, and 70 miles northeast of Redding, California.

DATES: Submit comments concerning the proposed action on or before April 1, 2013.

ADDRESSES: Send written comments to Christine Jordan, USDA Forest Service, Shasta McCloud Management Unit, P.O. Box 1620, McCloud, California 96057. Electronic comments and other data may be submitted via email to *comments-pacificsw-shasta-trinity-mtshasta-mccloud@fs.fed.us* or via facsimile to (530) 964–2938.

FOR FURTHER INFORMATION CONTACT: Christine Jordan, Natural Resources Planner, at (530) 964–3771.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose of the Elk Late-Successional Reserve Enhancement project is to reduce the current and future risk of large-scale disturbance events within early, mid and late-successional habitat within the Elk Flat Late-Successional Reserve (LSR) and nearby stands. This is consistent with Objectives I and III that guide the development and application of treatments within the Forest's Late-Successional Reserves (Forest-wide Late-Successional Reserve Assessment, LSRA). We recognize that natural disturbance is an important process within late-successional forest ecosystems, but both human and natural processes have altered the disturbance regime within the Elk Flat LSR such that without action, further stand and structural composition loss would result from the combination of continued overstocking and density-related mortality, root disease, insect attacks and predicted lethal fire effects. Approximately 15 percent of the Elk Flat LSR is currently comprised of large pockets (10 to 80 acres) of standing dead trees that are a current and future threat to both the surrounding habitat, due to increasing fuel loads, and members of the public visiting and recreating in the project area. Smaller mortality pockets range from groups of 5 to 10 trees up to ½ acre, primarily in the ponderosa pine component, with additional root disease-related mortality occurring in white fir stands. Additional benefits from risk reduction treatments include increasing the resilience and promoting continued development and connectivity of late-successional forest habitat within the Elk Flat LSR (LSRA Objectives II and IV). The Elk Flat LSR, designated as RC–360 in the LSRA, comprises approximately 90 percent of the project area, with the remaining 10 percent in matrix allocation.

Within the dry forested landscape of the California Cascades Province where the project area is located, fire suppression has resulted in significant increases in accumulated ground and understory fuels, while also making forested stands much more vulnerable to insects and disease impacts due to resultant overstocking. Because of the fire suppression history and lack of a natural fire regime in the project area, approximately 80 percent of the forested stands in the Elk Flat LSR are highly to extremely dense, particularly in relation to the survivability of pine. Current stand conditions reflect an increase in a shade-tolerant understory and midstory, composed primarily of white fir and incense cedar. Without low intensity fire or other disturbance, stand densities have increased as trees have continued to grow larger, with slowed tree growth as stands approach and reach a maximum carrying capacity. For most species, density-related tree mortality increases as stands reach and exceed 60 percent of a maximum stand density index, or SDI. An exception to this 60 percent standard is ponderosa pine. Research has repeatedly observed widespread mortality in ponderosa pine stands resulting from pine beetle outbreaks at densities below what had been considered 60 percent of maximum SDI. Stand exams completed in 2007 within the natural stands proposed for treatment measured densities above an SDI of 230, with many exceeding an SDI of 365. Additionally, older plantations (> 40 years) are near or above an SDI of 365. Based on the relationship with bark beetles, as ponderosa pine stands reach and exceed an SDI of 230 (or 60 percent of the SDI of 365), pine mortality from beetle outbreaks is increasingly likely.

Dense stocking also stresses trees as they compete for limited nutrients and moisture, especially during dry conditions, and it is often the larger, older trees that are most susceptible to this stress. It is important to note that the density-related mortality is not limited to the understory trees in the project area; the large dominant and pre-dominant ponderosa pine trees have also died, or are dying. This is reflected in the existing conditions of large mortality pockets described above, which are located in both the natural stands and plantations within the project area. Reducing tree densities in the lower and mid-level canopy layers with thinning can reduce fire behavior, improving both direct suppression efforts and reducing the potential for large-scale habitat loss from a running crown fire. Underburning after thinning can reduce surface and maintain ladder fuels at levels that do not allow for ground fire to transition into the upper canopy.

Without action, the density-related mortality, further exacerbated by drought, disease and future insect attacks will continue to spread throughout the project area, contributing to more standing and dead fuels and increasing the risk of a stand-replacing fire. Current ground fuel loadings in the Elk Flat LSR range from 5 to 10 tons per acre and are expected to increase to 20 plus tons per acre in the mixed conifer stands. Ground fuel loading is approximately 10 to 15 tons per acre in the ponderosa pine-dominated stands, where there are high levels of existing and ongoing mortality, and is expected

to increase to 35 to 100 plus tons per acre when these dead and dying trees fall. Forest Health specialists have also assessed the LSR for the presence of black stain and Heterobasidion root disease, locating it in several proposed treatment units.

Additional project benefits and objectives include increasing the resilience and promoting continued development and connectivity of late-successional forest habitat within the Elk Flat LSR and restoring forest stand and meadow conditions on adjacent matrix lands to allow for a natural fire regime. Through risk reduction and habitat restoration treatments, the potential for high severity fire effects on adjacent private lands and within Wildland Urban Interface associated with the Mt. Shasta Forest subdivision would be reduced, stream channel and Riparian Reserve function along Ash and Swamp Creeks would be improved and hardwood species diversity would be increased.

Proposed Action

The following acreages and distances are approximate. The proposed action would thin natural stands ranging from 60 to 120 years of age on 1,520 acres and 10 to 40 year old plantations on 680 acres. These treatment areas will also include radial thinning around legacy pine to protect this stand component and regeneration and group selection in existing mortality and root disease pockets. Removal of encroaching conifers, predominantly ponderosa pine, to restore meadow conditions in Elk Flat is proposed on 730 acres with follow-up underburning. Hardwoods, including aspen and California black oak, would be released to increase hardwood species diversity across the project area.

Within all treatment units, surface and activity generated fuels would be treated with a combination of machine piling and burning in areas with heavier mortality, hand piling in sensitive areas as needed, lop and scatter, mastication and/or underburning (or any combination thereof) to meet the desired condition for fuel objectives. The entire project area is proposed for underburning after initial thinning treatments are completed. Underburning the entire project area would reduce the need to construct control lines, with the exception of private property boundaries and where control lines are needed to protect resources. While existing roads would be used as control lines as needed, fire would be allowed to cross unit boundaries and creep into adjacent treated and untreated stands within the project area. Where resource protection is required, such as to retain large down logs, within sensitive Riparian Reserve areas, or near cultural sites or plant populations, line may be constructed in accordance with the developed resource protection measures.

The proposal includes road reconstruction on four miles of National Forest System roads to improve drainage and reduce erosion impacts. Closure and decommissioning of 13.5 miles of System roads and unauthorized routes is proposed to reduce impacts to wildlife connectivity, stream channels and floodplain function. Approximately two miles of temporary roads, which would be decommissioned after use, may be required to complete project activities. No new National Forest System roads would be constructed.

Approximately 120 landings up to 0.75-acre in size (some landing areas in heavy mortality zones may be one acre or more in size) would be located within or near unit boundaries. Landings and skid trails would be rehabilitated when no longer needed for the project.

Project implementation is currently proposed for completion under a stewardship contract. Proposed underburning activities and the site preparation of group selection areas, planting and monitoring is expected to be completed by Forest Service staff and/or service contracts. Contracts may take anywhere from one to five years from award to completion. Proposed road closures and decommissioning would occur upon completion of project activities. While the entire project area is a priority for treatment to slow the progression of existing mortality and loss of late-successional habitat, priority treatment areas have been identified. They include those areas of large standing dead material, the older plantations that are densely stocked, units with known black stain and heterobasidion root disease pockets and natural stands that contain larger pockets of mortality.

Approximately 90 percent of the project area is within Late-Successional Reserve allocation where a minimum of 10 percent of each thinned unit would remain unthinned to retain processes and conditions such as thermal and visual cover, natural suppression and mortality, small trees, natural size differentiation and undisturbed debris. In addition to the ten percent un-thinned areas, approximately 380 acres of natural stands within the Elk Flat LSR have been excluded from thinning treatments as field review either identified that they are not currently at risk or to maintain current late-successional habitat conditions for the northern spotted owl and northern goshawk. The latter stans will remain at high stocking densities where fire hazard and density-related mortality will remain high while continuing to function as habitat for these species. This is one element of an overall spatial and temporal strategy to provide habitat and address forest change over time in the advent of disturbance events and is consistent with Recovery Action 10 of the Revised Recovery Plan for the Northern Spotted Owl. The remaining 10 percent of project area is within matrix allocation with a commercial wood products emphasis, including the majority of Elk Flat meadow. There are approximately 280 acres of Riparian Reserves associated with intermittent and ephemeral streams within the project area; overlapping both LSR and matrix lands.

Thinning prescriptions were specifically developed to reduce the risk of losing late-successional habitat, increase conifer species composition and diversity in plantation areas and natural stands to increase resilience to disease and stocking pressure, treat black stain and/or heterobasidion root diseases and reduce the risk of future mortality areas. Within natural stand units, existing mortality pockets of pine and fir may be removed to create openings or be retained to reserve snag habitat and future coarse woody debris for wildlife. Retention/removal areas will be dependent on the objectives for the specific treatment unit, safety considerations of the public and operations and meeting fuel load objectives.

The proposed action is the result of field reviews, data acquisition and analysis including reviews and use of best available science by resource specialists on the project Interdisciplinary Team. Coordination and consultation with Tribes, the United States Fish and Wildlife Service, the Regional Water Quality Control Board, and collaboration with local watershed and restoration groups and adjacent landowners has been ongoing and will continue. The proposed action was guided by direction and objectives embodied in the Northwest Forest Plan, the Forest Plan, the Forest-wide Late-Successional Reserve Assessment and recommendations in the McCloud Flats Ecosystem Analysis. It is designed to be consistent with the Aquatic Conservation Strategy objectives and the Revised Recovery Plan for the Northern Spotted Owl. It incorporates guidance from the National Fire Plan, the Forest's Fire Management Plan and the Forest's Record of Decision for Motorized Travel Management. A project consistency

review with the Regional Ecosystem Office for the specific proposed thinning treatments and resultant stand conditions may be required.

The project Interdisciplinary Team developed Resource Protection Measures common to all action alternatives to minimize or eliminate potential environmental effects while achieving the desired condition. Development was guided by Forest Plan direction as well as other applicable law, regulation and policy, project-specific objectives and resource concerns identified by resource specialists. These measures complement the project design criteria developed as part of the proposed action, including species and age class retention preferences, microsite thinning and fuels treatment modifications in suitable habitat for late-successional species and within Riparian Reserves and cultural resource protections. Best management practices for maintaining, protecting and monitoring water quality and soils will also be utilized.

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need, or take no action.

Permits or Licenses Required

A permit would be required from the State of California prior to burning piles. The appropriate regulatory agencies will be consulted regarding national or state required permits associated with roads used during project implementation. All required permits will be obtained prior to implementation.

Scoping Process

The project is included in the Shasta-Trinity National Forest's quarterly schedule of proposed actions (SOPA). Detailed information on the proposed action, including maps, that will aid in the informing comments will be available on the Forest Web site at *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=31312.* Scoping notice will be published in the Redding Record Searchlight and the Mount Shasta Herald.

This notice of intent initiates the scoping process, which guides the development of issues (cause-effect relationships that highlight effects or unintended consequences), alternatives and analysis for the environmental impact statement. It is important that reviewers provide their comments at such times and in such a manner that they are useful to identifying issues, developing alternatives, conducting resource analysis and preparing the environmental impact statement. Therefore, comments should be provided prior to the close of the 30-day comment period and should clearly articulate the reviewer's concerns.

Please include the following information with your comments: Your name, address and telephone number, the project name: Elk Late-Successional Reserve Enhancement project and site-specific comments about the proposed action, along with supporting information you believe will help identify issues, develop alternatives or predict environmental effects of the proposal. The most useful comments provide new information or describe unwanted environmental effects potentially caused by the proposed action. If you reference scientific literature in your comments, you must provide a copy of the entire cited reference and include rationale as to how you feel it is pertinent to the Elk Late-Successional Reserve Enhancement project.

A public information meeting will be held on March 5, 2013 from 6:30 p.m. to 8:30 p.m. at the McCloud Ranger Station conference room, located at 2019 Forest Road in McCloud, California. At this meeting, members of the project Interdisciplinary Team will present information on the purpose and need, existing conditions and the developed proposed action to meet the desired conditions in the project area. Written comments may be submitted at this meeting in addition to submitting them via mail and electronically as described in the **ADDRESSES** section above. Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action.

Dated: February 14, 2013.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 2013–04642 Filed 2–27–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

San Bernardino National Forest; California; Omya Sentinel and Butterfield Quarry Expansion Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and environmental impact report.

SUMMARY: Omya California (Omya), a division of Omya Inc., has submitted the following applications:

- An Amended Plan of Operations and Reclamation Plan to the U.S. Department of Agriculture, Forest Service, San Bernardino National Forest (SBNF); and
- A Mining and Land Reclamation Plan Conditional Use Permit application submitted to the County of San Bernardino (County).

Combined, these applications propose the expansion of the existing Sentinel and Butterfield Quarries. The existing permitted Sentinel and Butterfield limestone quarries are located on mining claims within the SBNF. Known limestone ore resources, within the proposed quarry expansions, will add an additional 20 years life to the Sentinel Quarry, add an additional 40 years life to the Butterfield Quarry, and will allow mining at both quarries to be extended until 2055. Depending on market demand, the combined Sentinel and Butterfield Quarries average ore production rates will be approximately 680,000 tons per year compared to the 3-year average between 2004–2006 of approximately 378,000 tons per year. Reclamation will occur concurrently with mining. The proposed expansion includes 48.7 acres of disturbance at the Sentinel Quarry and 28.8 acres of disturbance at the Butterfield Quarry, for a total of 77.3 acres. Quarry development and expansion will be phased. Disturbance proposed for the project includes expansion of existing Sentinel and Butterfield Quarries, expansion of associated overburden placement sites, additional internal access roads and ancillary facility areas, and minor adjustments to existing disturbance boundaries. There are no new quarries, haul roads or overburden sites in this plan, only the phased expanded development and reclamation of the existing Sentinel and Butterfield Quarries.

Implementation of the Proposed Project will require discretionary approvals from Federal, State, and local agencies and, therefore, this project is subject to the environmental review requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). To ensure coordination between the NEPA and CEQA processes, and to avoid duplication of effort, a joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) is being prepared as recommended by

CEQA Guidelines Section 15222 and 40 CFR 1506.25. The Forest Service is the NEPA Lead Agency and the County will be the CEQA Lead Agency for the joint EIR/EIS. As Lead Agency for the NEPA process, the Forest Service issues this Notice of Intent (NOI), as required by NEPA, for the Project. The County will issue a separate Notice of Preparation (NOP), as required for CEQA for the Proposed Project.

Comments are being requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues (including alternatives) that need to be analyzed and to eliminate from detailed study those issues that are not significant. Supporting documentation should be included with comments recommending that the EIR/EIS address specific environmental issues.

DATES: Comments concerning the scope of the analysis must be received by April 1, 2013. The draft EIR/EIS is expected October 2013 and the final EIR/EIS is expected February 2014.

ADDRESSES: Send written comments to Maya Rohr, Omya Sentinel and Butterfield—Quarries Expansion Project, Sespe Consulting, 5920 Friars Road, Suite 103, San Diego, CA 92108. Comments may also be sent via email to *mrohr@sespeconsulting.com*.

Public Scoping meetings will be held on March 11, 2013 at the Big Bear Discovery Center, 40971 North Shore Drive (Highway 38), Fawnskin, California 92333 beginning at 5 p.m. PST, and March 12, 2013 at the Lucerne Valley Community Center, 33187 Highway 247 East, Lucerne Valley, California 92356 beginning at 5 p.m. PST.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIR/EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: Maya Rohr, Senior Project Manager, Sespe Consulting at (619) 894–8669 or *mrohr@sespeconsulting.com*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Omya California submitted the Amended Plan of Operations and Reclamation Plan for the proposed expansion of the existing Butterfield Limestone Quarry to the San Bernardino National Forest, on November 1, 2010. The project was scoped as an Environmental Assessment (EA), and through the analysis of the comments received, the Responsible Official determined that an EIS would be prepared. At that time, the project was expanded to include additional expansion at the Sentinel Quarry as well.

The project site is located approximately 7.5 miles south of the community of Lucerne Valley and 5 miles north of Big Bear Lake within the SBNF in San Bernardino County, California, and is accessed by the vested Crystal Creek Haul Road. The project area is within portions of Sections 23, 24, and 25 Township 3 North, Range 1 West, SBBM. The Butterfield and Sentinel Quarries are located entirely within portions of approximately 954 acres of unpatented placer claims controlled by Omya located on public land administered by the Forest Service. These claims include Crystal Creek 1, 2, 4, 13 and 14, Slope North and King 3.

Both quarries have been mined by Omya since 1977. The Sentinel Quarry is currently permitted to operate through the year 2035, and the Butterfield Quarry through 2015. Known limestone resources, with the proposed quarry expansions, will add an additional 40 years of operations for Butterfield (2016 through 2055) and a proposed additional 20 years for the Sentinel Quarry (2036 through 2055). Depending on market demand, average ore production rates to the processing plant in Lucerne Valley will increase to approximately 680,000 tons of ore to the plant per year, compared to the 3-year average between 2004–2006 of approximately 378,000 tons per year.

The previously approved State Mining and Reclamation Act (SMARA) Reclamation Plans (2003) include a site specific approved revegetation plan, including growth media salvage, organics placement, seeding and revegetation, seed collection and propagation, irrigation, site cleanup, public safety, rock and fill slope stability, drainage and erosion controls, monitoring and maintenance plan and bond release criteria.

Purpose and Need for Action

Omya submitted an amended Plan of Operations and Reclamation Plan to the Forest Service, and a Conditional Use Permit application and Reclamation Plan to the County. These submittals describe the proposed expansion of the existing Sentinel and Butterfield Quarries. The Forest Service is analyzing the surface use of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21–54). The United States mining laws confer a statutory right to enter upon the public lands to search for minerals, and require that these activities shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources (36 CFR 228.8). The responsibility for managing mineral resources is in the Secretary of the Interior.

Within the United States, productive deposits of white, high purity limestone are found in only a few areas. The Omya deposits are one of these sources of high calcium limestone that can be used as whiting. Whiting is used in the form of nontoxic fillers and extenders in a large number of products ranging from paper products to environmental cleanup, carpet backing, plastics, PVC, paint, paper and other building products. Limestone mining provides numerous environmental benefits including fewer trees harvested for paper making, less petroleum products utilized and less greenhouse gases produced. Limestone can also be used as a substitute for other components in industrial processes and the manufacture of consumer products.

Proposed Action

The proposed expansion includes 48.7 acres of disturbance at the Sentinel Quarry and 28.8 acres of disturbance at the Butterfield Quarry for a total of 77.3 acres. Disturbance proposed for this project includes expansion of existing Sentinel and Butterfield Quarries, expansion of associated overburden placement sites, haul road and ancillary facility areas, and minor adjustments to existing disturbance boundaries. Reclamation for the inactive Cloudy and Claudia quarries, overburden stockpiles, and haul roads on Forest Service lands, including reclamation of the Crystal Creek Haul Road, are covered in the 1994 approved Reclamation Plan and incorporated into the proposed Amended Plan. There are no changes to these sites with the exception of extending the years of use of the Crystal Creek Haul Road by 10 years from 2046 to 2055 followed by 10 years of reclamation. There are no new quarries, haul roads or overburden sites in this plan, only the phased expanded development and reclamation of existing Sentinel Quarry and Butterfield Quarry.

Both the Sentinel and Butterfield Quarries are multi-bench open pit mines where five grades of ore are selectively mined. The ore is drilled and blasted, loaded into haul trucks, and hauled to a crusher located near the Sentinel Quarry (Sentinel crusher). The Sentinel resources are mined in 30-foot cuts with a 30–35 foot safety bench approximately every 60 feet of depth and will have up to 11 benches. The Butterfield deposit is mined in 25 foot cuts with a safety bench approximately every 50 feet and will have up to 8 benches. Bench height has been determined as a result of detailed studies of the geologic structure. Face angles for both quarries average 70 degrees. The highest level of the pit at the Sentinel Quarry is at an elevation of 7,600 feet above mean sea level (amsl) and mining will ultimately reach 7,000 feet amsl. The highest level of the pit at the Butterfield Quarry is 7,900 feet and mining will ultimately reach 7,650 feet amsl.

Project Phasing. Although mining is more or less continuous, the development of the quarries will be phased. The proposed expansion for both quarries includes four (4) 10-year mining phases or pushbacks starting in the year 2016 for the Sentinel Quarry and 2015 for the Butterfield Quarry. The Sentinel quarry will be progressively developed to the south, west, and east property line, and eventually deepened to the footwall to reach the final depth of 7,000 feet amsl. Backfilling will start on the northern wall and gradually filling the quarry to approximate original contours. The Butterfield quarry will be mined during the first four phases from east to west on several levels within the quarry and will eventually deepen to reach a final depth of 7,700 (western portion) to 7,650 (eastern portion) feet amsl. During mining of the western half of the Butterfield Quarry, concurrent backfilling of the eastern quarry area will occur. Ultimately the eastern portion will be completely backfilled to approximate original contours. The overburden will be progressively placed in the eastern portion of the Butterfield Quarry, but only after those portions of the quarry have reached their final outer limit and the ore has been mined out. Phase 5 involves reclamation.

Reclamation. To minimize impacts to the surrounding environment, Omya proposes to reclaim the quarry sites in a manner that meets both Forest Service Minerals Regulations (36 CFR part 228, Subpart A), under the jurisdiction of the Forest Service, and the California Surface Mining and Reclamation Act of 1975, as amended (SMARA), which is implemented by the County.

The Forest Service approved the previous Omya Umbrella Plan of Operations and Reclamation Plan in 1988. The SMARA Reclamation Plan (94M–02) was approved by the Forest Service and the County in 1994. The Forest Service approved the existing Plan of Operations and Reclamation Plan for Butterfield and Sentinel Quarries in 2002, following completion of an environmental assessment and evaluation of the Plan of Operations. The SMARA Reclamation Plan was amended and approved by the County in 2003.

No changes in the approved revegetation plans are proposed other than increased acres and timing changes. Timing schedules are revised for the development and reclamation of the Sentinel and Butterfield quarries as detailed in the Amended Plan of Operations and Reclamation Plan. Reclamation costs for the quarry sites have been revised. Reclamation will be monitored as required in the approved monitoring plan for 10 years, and the bond reviewed yearly and adjusted to reflect completed reclamation, new disturbance, and variations in the economy (inflation).

Final reclamation will take place within 10 years of terminating mining activities. All remaining equipment will be removed, stockpiles will either be removed or used during reclamation, and internal roads not needed for site access, reclamation, and revegetation and general site monitoring will be reclaimed. Final sloping of quarry walls, backfilled areas, and overburden stockpiles; erosion control; and revegetation of any unreclaimed areas and waste rock stockpiles will be conducted. Some haul roads may be left onsite for use in the revegetation and monitoring activities and for overall site public safety. Ongoing maintenance of fencing, signs, and erosion control will be conducted. Roads not needed for site and quarry access will be ripped, covered with available growth media, and revegetated. Other onsite roads needed for quarry and pad access will be reclaimed after reclamation of quarries and pads are certified complete, as determined by the Forest Service, in order to allow access to all reclamation areas.

Avoidance/Minimization and Environmental Protection Measures. The Amended Plan of Operations includes avoidance/minimization and environmental protection measures, including:

1. Quit claim to the SBNF 300 acres of unpatented mining claims held within the SBNF which are known to have occupied endangered species habitat agreed upon by the Forest Service and consistent with the 2003 Carbonate Habitat Management Strategy (CHMS).

2. Design the mine plan to deposit future overburden into existing overburden areas and completed quarries as much as feasible to avoid possible impacts to existing cushenbury oxytheca populations.

3. Submit additional reclamation bond to cover the new disturbance in the expansion areas prior to starting the development work.

4. Implement a Dust Management Plan (DMP) for the quarry expansion areas.

5. Implement an Employee Awareness Plan that will provide information, training, and protection measures on the following:

A. Mining within Critical Habitat for listed plant species in cooperation with United States Fish and Wildlife Service (USFWS) and Forest Service.

B. Mining in proximity to an area of Forest Service land segregated from mineral entry and location in cooperation with BLM and Forest Service (CHMS designated refugia).

C. Awareness and protection measures about bighorn sheep in cooperation with USFWS, California Department of Fish and Game (CDFG), and Forest Service.

D. Benefits of preserving heritage resources in cooperation with the Forest Service.

6. Continue maintaining the water guzzler for bighorn sheep near the north end of the Sentinel Quarry.

7. Continue support of CDFG bighorn sheep studies during the mining project.

8. Dispose of sediment from runoff control basins to pre-approved sites rather than side cast down slopes.

9. As areas become available after the completion of mining, implement concurrent reclamation/revegetation of completed quarries and overburden stockpiles to reduce visual impacts through backfilling, recontouring and slope reduction, growth media and habitat log placement, revegetation with native plant species, and colorization as applicable.

10. Any unexpected or unforeseen events will result in immediate notification to the Forest Service. If conditions are encountered that vary significantly from the assumptions used in the mine design and environmental assessments, Omya will coordinate with the Forest Service to determine required actions.

11. Monitoring as described below is incorporated to be part of the approved Plan of Operations: Forest Mine Administrator, Certified Mineral

Examiner or other qualified specialists will document and assure the avoidance/minimization and environmental protection measures incorporated into the Plan of Operations and the Decision are being followed and that they are effective in protecting the environment. Inspections will occur during the life of the project at least once a year to document the site conditions and to assure the Plan of Operations is being followed. If it is determined that a particular environmental protection measure is not adequately protecting surface resources, the Plan of Operations will be modified to correct the situation. Significant changes may require additional analysis and documentation in compliance with the National Environmental Policy Act.

Lead and Cooperating Agencies

The Forest Service, as lead agency under NEPA, and County of San Bernardino, as the lead state agency under CEQA, will be preparing a joint EIR/EIS. This EIR/EIS will analyze and disclose the potential effects of the proposed limestone quarry expansion. The Mojave Desert Air Quality Management District has agreed to participate as a cooperating agency and to provide expertise regarding the proposed actions' relationship to the relevant objectives of regional, State and local land use plans, policies and controls.

Responsible Official

The Responsible Official under NEPA for the Omya Sentinel and Butterfield Quarry Expansion project is the San Bernardino National Forest Supervisor, Jody Noiron.

Nature of Decision To Be Made

The Responsible Official will decide whether to approve the Amended Plan of Operations and Reclamation Plan following the environmental analysis. The Forest Service does not have the authority to remove the proponent's ability to mine their claim on National Forest System lands. The Responsible Official will also decide if an amendment to the San Bernardino National Forest Land Management Plan is required.

The County will decide whether to approve the Mining and Land Reclamation Plan Conditional Use Permit following the environmental analysis.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIR/EIS. The complete amended Plan of Operation and Reclamation Plan is available on the San Bernardino National Forest Web site at: *http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=32613.*

Public Scoping meetings will be held on March 11, 2013 at the Big Bear Discovery Center, 40971 North Shore Drive (Highway 38), Fawnskin, California 92333 beginning at 5 p.m. PST, and March 12, 2013 at the Lucerne Valley Community Center, 33187 Highway 247 East, Lucerne Valley, California 92356 beginning at 5 p.m. PST.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIR/EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: February 21, 2013.

Jody Noiron,

Forest Supervisor.

[FR Doc. 2013–04648 Filed 2–27–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Age Search Service

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 April 29, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cleo Henderson, U.S. Census Bureau, National Processing Center, Jeffersonville, Indiana 47132; phone: (812) 218–3434; or: *cleo.henderson@census.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

Age Search is a service provided by the U.S. Census Bureau for persons who need official transcripts of personal data as proof of age for pensions, retirement plans, medicare, and social security. The transcripts are also used as proof of citizenship to obtain passports or to provide evidence of family relationship for rights of inheritance. The Age Search forms are used by the public in order to provide the Census Bureau with the necessary information to conduct a search of historical population decennial census records in order to provide the requested transcript. The Age Search service is self-supporting and is funded by the fees collected from the individuals requesting the service.

II. Method of Collection

The Form BC–600, Application for Search of Census Records, is a public use form that is submitted by applicants requesting information from the decennial census records. Applicants are requested to enclose the appropriate fee by check or money order with the completed and signed Form BC–600 and return by mail to the U.S. Census Bureau, Post Office Box 1545, Jeffersonville, Indiana 47131. The Form BC–649 (L), which is called a ''Not Found'', advises the applicant that the search for information from the census records was unsuccessful. The BC–658 (L) is sent to the applicant when insufficient information has been received on which to base a search of the census records. These two forms request additional information from the applicant to aid in the search of census records.

The BC–600 will be updated to add the 2010 Decennial Census to the list of searchable censuses. The form will also be updated to inform applicants that checks are now being processed by electronic transfer of funds.

III. Data

OMB Control Number: 0607–0117.

Form Numbers: BC–600, BC–649(L), BC–658(L).

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,479 Total.

BC–600 2,799.

BC–649(L) 654.

BC–658(L) 26.

Estimated Time per Response:

BC–600 12 minutes.
BC–649(L) 6 minutes.
BC–658(L) 6 minutes.

Estimated Total Annual Burden Hours: 628.

Estimated Total Annual Cost: The Age Search processing fee is $65.00 per case. An additional charge of $20 per case for expedited requests requiring results within one day is also available.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 U.S.C., Section 8.

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: February 22, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–04607 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–138–2012]

Approval of Subzone Status; Sea World, Inc.; Guaynabo, Puerto Rico

On December 12, 2012, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Puerto Rico Trade & Export Company, grantee of FTZ 61, requesting subzone status subject to the existing activation limit of FTZ 61, on behalf of Sea World, Inc., in Guaynabo, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (77 FR 75145, 12/19/2012). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 61M is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 61's 1,821.07-acre activation limit.

Dated: February 22, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–04682 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on March 14, 2013, 10:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 6087B, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

1. Opening remarks by the Chairman and Vice Chairman.
2. Opening remarks by the Bureau of Industry and Security.
3. Presentation of papers or comments by the public.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*, no later than March 7, 2013.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

For more information, contact Yvette Springer on 202–482–2813.

Dated: February 25, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–04696 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on March 26, 2013, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals for next Wassenaar meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Other business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than March 19, 2013.

A limited number of seats will be available for the public session.

Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 20, 2013, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–2813.

Dated: February 25, 2013.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2013–04698 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Initiation of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received requests to conduct an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). The anniversary month of this order is January. In accordance with the Department's regulations, we are initiating this administrative review.

DATES: *Effective Date:* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests, in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC covering multiple entities.[1] The Department is now initiating an administrative review of the order covering those entities. All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

On December 3, 2012, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (''Petitioners'') submitted comments in which they requested that the Department amend its respondent selection process and also request additional information from respondents applying for separate-rate status. In the notice announcing the opportunity to request administrative reviews of the antidumping duty order on wooden bedroom furniture from the PRC, the Department asked that parties wanting to comment on the processes discussed by Petitioners or on Petitioners' December 3, 2012, submission do so by January 31, 2013. We have received no comments in response to this invitation.[2]

Based on comments from Petitioners and the unique circumstances present in administering this order, for the purposes of this segment of the proceeding, *i.e.,* the 2012 review period, the Department has decided to modify the process by which it will collect quantity and value (''Q&V'') information upon which the selection of mandatory respondents will be made. Further, we have decided to require that all parties filing separate rate applications or certifications respond to the Q&V questionnaire and certain additional questions. The Q&V questionnaire, the additional questions, and the Separate Rate Application and Separate Rate Certification will be included in a document package that will be available on the Department's Web site. Responses to the additional questions and to the Q&V questionnaire will be due at the same time that responses to the Separate Rate Application and Separate Rate Certification are due unless otherwise noted by the Department.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register.**[3] All submissions must be filed electronically at <*http://iaaccess.trade.gov*> in accordance with 19 CFR 351.303.[4] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2)(B) of the Act permits the Department to examine exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Due to the large number of firms for which an administrative review of wooden bedroom furniture has been requested, and the Department's experience regarding the resulting administrative burden of reviewing each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review in accordance with the Act.

In the event that the Department limits the number of respondents for individual examination in the administrative review of wooden bedroom furniture from the PRC, the Department intends to select respondents based on volume data

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] *See Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 288 (January 3, 2013).

[3] Producers or exporters may also fulfill this requirement by submitting a properly filed and timely Q&V questionnaire response that indicates that the entity or entities had no exports, sales, or entries of subject merchandise during the POR. *See* discussion *infra* providing further information regarding Q&V questionnaires.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

contained in responses to a Q&V questionnaire. All parties are hereby notified that they must timely respond to the Q&V questionnaire. The Department's Q&V questionnaire along with the Separate Rate Application, Separate Rate Certification, and certain additional questions will be available in a document package on the Department's Web site at *http://ia.ita.doc.gov/download/prc-wbf/* on the date this notice is signed. The responses to the Q&V questionnaire should be filed with the respondents' Separate Rate Application or Separate Rate Certification and their response to the additional questions and must be received by the Department by no later than 60 days after publication of this notice. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V questionnaire.

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, in general, each company must report Q&V data separately for itself, *i.e.,* parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under criteria arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates test, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in this administrative review must complete, as appropriate, either a separate-rate certification or application, as described below, and respond to the additional questions and the Q&V questionnaire which are included along with the separate-rate certification and application in a document package on the Department's Web site. In order to demonstrate separate-rate eligibility, the Department requires entities for which a review was requested and that were assigned a separate rate in the most recently completed segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The separate rate certification will be available in a document package on the Department's Web site at <*http://ia.ita.doc.gov/download/prc-wbf/*>. In responding to the certification, please follow the filing instructions in the document package. Separate rate certifications, as well as a response to the Q&V questionnaire and the additional questions in the document package, are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a separate rate certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [5] should timely file a separate rate application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[6] should timely file a separate rate application to demonstrate eligibility for a separate rate in this proceeding. The separate rate application will be available in a document package on the Department's Web site at <*http://ia.ita.doc.gov/*

[5] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[6] Only changes to the official company name, rather than trade names, need to be addressed via a separate rate application. Information regarding new trade names may be submitted via a separate rate certification.

download/prc-wbf/>. In responding to the separate rate application, please follow the filing instructions in the document package. Separate rate applications, as well as a response to the Q&V questionnaire and the additional questions in the document package, are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a separate rate application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate rate application or separate rate certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Notification

This notice constitutes public notification to all firms for which an administrative review of wooden bedroom furniture has been requested, and that are seeking separate rate status in the review, that they must submit a timely separate rate application or certification (as appropriate) as described above, and a timely response to the Q&V questionnaire and the additional questions in the document package on the Department's Web site in order to receive consideration for separate-rate status. In other words, the Department will not give consideration to any timely separate rate certification or application made by parties who failed to respond in a timely manner to the Q&V questionnaire and the additional questions. All information submitted by respondents in this administrative review is subject to verification. As noted above, the separate rate certification, the separate rate application, the Q&V questionnaire, and the additional questions will be available in a document package on the Department's Web site on the date of publication of this notice in the **Federal Register.**

Initiation of Review

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC with respect to the following companies, for the January 1, 2012, through December 31, 2012, POR. We intend to issue the final results of this review no later than January 31, 2014.

Name	Separate rate as of latest completed segment of proceeding
Alexandre International Corp., Southern Art Development Ltd., Alexandre Furniture (Shenzhen) Co., Ltd., Southern Art Furniture Factory.	Yes.
Art Heritage International, Ltd., Super Art Furniture Co., Ltd., Artwork Metal & Plastic Co., Ltd., Jibson Industries Ltd., Always Loyal International.	Yes.
Billy Wood Industrial (Dong Guan) Co., Ltd., Great Union Industrial (Dongguan) Co., Ltd., Time Faith Ltd	Yes.
Changshu HTC Import & Export Co., Ltd	Yes.
Cheng Meng Furniture (PTE) Ltd., Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd	Yes.
Chuan Fa Furniture Factory	Yes.
Clearwise Company Limited	Yes.
COE Ltd	Yes.
Dalian Guangming Furniture Co., Ltd	Yes.
Dalian Huafeng Furniture Group Co., Ltd	Yes.
Dalian Pretty Home Furniture a.k.a. Dalian Pretty Home Furniture Co., Ltd	Yes.
Decca Furniture Ltd	Yes.
Dongguan Cambridge Furniture Co., Ltd., Glory Oceanic Co., Ltd	Yes.
Dongguan Dihao Furniture Co., Ltd	Yes.
Dongguan Great Reputation Furniture Co., Ltd	Yes.
Dongguan Huansheng Furniture Co., Ltd	Yes.
Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd	Yes.
Dongguan Kin Feng Furniture Co., Ltd	Yes.
Dongguan Kingstone Furniture Co., Ltd., Kingstone Furniture Co., Ltd	Yes.
Dongguan Liaobushangdun Huada Furniture Factory, Great Rich (Hk) Enterprises Co., Ltd	Yes.
Dongguan Lung Dong Furniture Co., Ltd., Dongguan Dong He Furniture Co., Ltd	Yes.
Dongguan Mingsheng Furniture Co., Ltd	Yes.
Dongguan Singways Furniture Co., Ltd	Yes.
Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmount Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.	Yes.
Dongguan Sunshine Furniture Co., Ltd	Yes.
Dongguan Yihaiwei Furniture Limited	Yes.
Dongguan Yujia Furniture Co., Ltd	Yes.
Dongying Huanghekou Furniture Industry Co., Ltd	Yes.
Dorbest Ltd., Rui Feng Woodwork Co., Ltd. Aka Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development Co., Ltd. Aka Rui Feng Lumber Development (Shenzhen) Co., Ltd.	Yes.
Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (PTE) Ltd	Yes.
Fine Furniture (Shanghai) Ltd	Yes.
Fortune Furniture Ltd., Dongguan Fortune Furniture Ltd	Yes.
Fuijian Lianfu Forestry Co, Ltd. (a.k.a. Fujian Wonder Pacific Inc.), Fuzhou Huan Mei Furniture Co., Ltd., Jiangsu Dare Furniture Co., Ltd.	Yes.
Gaomi Yatai Wooden Ware Co., Ltd., Team Prospect International Limited, Money Gain International Co	Yes.
Garri Furniture (Dong Guan) Co., Ltd., Molabile International, Inc., Weei Geo Enterprise Co., Ltd	Yes.
Golden Well International (HK) Ltd	Yes.
Guangdong New Four Seas Furniture Manufacturing Ltd	Yes.
Guangzhou Lucky Furniture Co., Ltd	Yes.
Guangzhou Maria Yee Furnishings Ltd., Pyla HK, Ltd., Maria Yee, Inc	Yes.
Hang Hai Woodcraft's Art Factory	Yes.

Name	Separate rate as of latest completed segment of proceeding
Hangzhou Cadman Trading Co., Ltd	Yes.
Hualing Furniture (China) Co., Ltd., Tony House Manufacture (China) Co., Ltd., Buysell Investments Ltd., Tony House Industries Co., Ltd.	Yes.
Jardine Enterprise, Ltd	Yes.
Jiangmen Kinwai Furniture Decoration Co., Ltd	Yes.
Jiangmen Kinwai International Furniture Co., Ltd	Yes.
Jiangsu Xiangsheng Bedtime Furniture Co., Ltd	Yes.
Jiangsu Yuexing Furniture Group Co., Ltd	Yes.
Jiedong Lehouse Furniture Co., Ltd	Yes.
Kunshan Summit Furniture Co., Ltd	Yes.
Langfang Tiancheng Furniture Co., Ltd	Yes.
Longkou Huangshan Furniture Factory	Yes.
Longrange Furniture Co., Ltd	Yes.
Macau Youcheng Trading Co./Zhongshan Youcheng Wooden Arts & Crafts Co., Ltd	Yes.
Nanhai Baiyi Woodwork Co., Ltd	Yes.
Nanhai Jiantai Woodwork Co., Ltd., Fortune Glory Industrial Ltd. (H.K. Ltd.)	Yes.
Nanjing Nanmu Furniture Co., Ltd	Yes.
Nathan International Ltd., Nathan Rattan Factory	Yes.
Passwell Corporation, Pleasant Wave Ltd	Yes.
Perfect Line Furniture Co., Ltd	Yes.
Po Ying Industrial Co	Yes.
Prime Wood International Co., Ltd, Prime Best International Co., Ltd., Prime Best Factory, Liang Huang (Jiaxing) Enterprise Co., Ltd.	Yes.
Putian Jinggong Furniture Co., Ltd	Yes.
Qingdao Beiyuan-Shengli Furniture Co., Ltd., Qingdao Beiyuan Industry Trading Co., Ltd	Yes.
Qingdao Liangmu Co., Ltd	Yes.
Qingdao Shengchang Wooden Co., Ltd	Yes.
Red Apple Trading Co., Ltd., Shenzhen Tiancheng Furniture Co., Ltd., Winbuild Industrial Ltd., Red Apple Furniture Co., Ltd.	Yes.
Restonic (Dongguan) Furniture Ltd., Restonic Far East (Samoa) Ltd	Yes.
Rizhao Sanmu Woodworking Co., Ltd	Yes.
Season Furniture Manufacturing Co., Season Industrial Development Co	Yes.
Sen Yeong International Co., Ltd., Sheh Hau International Trading Ltd	Yes.
Shanghai Jian Pu Export & Import Co., Ltd	Yes.
Shanghai Maoji Imp And Exp Co., Ltd	Yes.
Sheng Jing Wood Products (Beijing) Co., Ltd., Telstar Enterprises Ltd	Yes.
Shenyang Shining Dongxing Furniture Co., Ltd	Yes.
Shenzhen Forest Furniture Co., Ltd	Yes.
Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd	Yes.
Shenzhen New Fudu Furniture Co., Ltd	Yes.
Shenzhen Shen Long Hang Industry Co., Ltd	Yes.
Shenzhen Wonderful Furniture Co., Ltd	Yes.
Shenzhen Xingli Furniture Co., Ltd	Yes.
Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (Hk), Dongguan Zhenxin Furniture Co., Ltd., Dongguan Yongpeng Furniture Co., Ltd.	Yes.
Shun Feng Furniture Co., Ltd	Yes.
Songgang Jasonwood Furniture Factory, Jasonwood Industrial Co., Ltd. S.A	Yes.
Starwood Industries Ltd	Yes.
Strongson Furniture (Shenzhen) Co., Ltd., Strongson Furniture Co., Ltd., Strongson (HK) Co	Yes.
Sunforce Furniture (Hui-Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.	Yes.
Superwood Co., Ltd., Lianjiang Zongyu Art Products Co., Ltd	Yes.
Teamway Furniture (Dong Guan) Ltd., Brittomart Inc	Yes.
Techniwood Industries Ltd., Ningbo Furniture Industries Limited, Ningbo Hengrun Furniture Co., Ltd	Yes.
Tianjin First Wood Co., Ltd	Yes.
Tianjin Fortune Furniture Co., Ltd	Yes.
Tianjin Phu Shing Woodwork Enterprise Co., Ltd	Yes.
Tradewinds Furniture Ltd., Fortune Glory Industrial Ltd. (H. K. Ltd.)	Yes.
Transworld (Zhang Zhou) Furniture Co., Ltd	Yes.
Tube-Smith Enterprise (Zhangzhou) Co., Ltd., Tube-Smith Enterprise (Haimen) Co., Ltd., Billionworth Enterprises Ltd	Yes.
U-Rich Furniture (Zhangzhou) Co., Ltd., U-Rich Furniture Ltd	Yes.
Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., Dongguan Wanhengtong Industry Co., Ltd	Yes.
Wanvog Furniture (Kunshan) Co., Ltd	Yes.
Winmost Enterprises Limited	Yes.
Woodworth Wooden Industries (Dong Guan) Co., Ltd	Yes.
Xiamen Yongquan Sci-Tech Development Co., Ltd	Yes.
Xilinmen Furniture Co., Ltd	Yes.
Yeh Brothers World Trade, Inc	Yes.
Yihua Timber Industry Co., Ltd., Guangdong Yihua Timber Industry Co., Ltd	Yes.
Zhang Zhou Sanlong Wood Product Co., Ltd	Yes.
Zhangjiagang Daye Hotel Furniture Co., Ltd	Yes.

Name	Separate rate as of latest completed segment of proceeding
Zhangzhou Guohui Industrial & Trade Co., Ltd	Yes.
Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd	Yes.
Zhongshan Fookyik Furniture Co., Ltd	Yes.
Zhongshan Golden King Furniture Industrial Co., Ltd	Yes.
Zhoushan For-Strong Wood Co., Ltd	Yes.
Baigou Crafts Factory of Fengkai	No.
Best King International Ltd	No.
BNBM Co., Ltd	No.
Brother Furniture Manufacture Co., Ltd	No.
C.F. Kent Co., Inc	No.
C.F. Kent Hospitality, Inc	No.
Classic Furniture Global Co., Ltd	No.
Creation Industries Co., Ltd	No.
Der Cheng Furniture Co., Ltd	No.
Der Cheng Wooden Works of Factory	No.
Dong Guan Golden Fortune Houseware Co., Ltd	No.
Dongguan Bon Ten Furniture Co., Ltd	No.
Dongguan Chengcheng Furniture Co., Ltd	No.
Dongguan Chunsan Wood Products Co, Ltd	No.
Dongguan Creation Furniture Co., Ltd	No.
Dongguan Da Zhong Woodwork Co., Ltd	No.
Dongguan Grand Style Furniture Co., Ltd	No.
Dongguan Haoshun Furniture Ltd	No.
Dongguan Hero Way Woodwork Co., Ltd	No.
Dongguan Hua Ban Furniture Co., Ltd	No.
Dongguan Mu Si Furniture Co., Ltd	No.
Dongguan New Technology Import & Export Co., Ltd	No.
Dongguan Sunpower Enterprise Co., Ltd	No.
Dream Rooms Furniture (Shanghai) Co., Ltd	No.
Ever Spring Furniture Company Ltd	No.
Fairmont Designs	No.
Fleetwood Fine Furniture Lp	No.
Foliot Furniture Corporation	No.
Foliot Furniture Inc	No.
Foliot Furniture Pacific Inc	No.
Forward Win Enterprises Co., Ltd	No.
Foshan Guanqiu Furniture Co., Ltd	No.
Furnmart Ltd	No.
Green River Wood (Dongguan) Ltd	No.
Guangdong Sunwin Green Furniture Industry Group Co., Ltd	No.
Guangming Group Wumahe Furniture Co.,Ltd	No.
Hainan Jong Bao Lumber Co., Ltd	No.
Hero Way Enterprises Ltd	No.
Hong Kong Da Zhi Furniture Co., Ltd	No.
Hong Kong Jingbi Group	No.
Huasen Furniture Co., Ltd	No.
Hung Fai Wood Products Factory, Ltd	No.
Hwang Ho International Holdings Limited	No.
Inni Furniture	No.
Jiangsu Weifu Group Fullhouse Furniture Mfg. Corp	No.
Jibbon Enterprise Co., Ltd	No.
Kai Chan (Hong Kong) Enterprise Ltd	No.
Kai Chan Furniture Co., Ltd	No.
King Rich International, Ltd	No.
King's Way Furniture Industries Co., Ltd	No.
Kingsyear Ltd	No.
Kuan Lin Furniture (Dong Guan) Co., Ltd	No.
Kuan Lin Furniture Co., Ltd	No.
Kuan Lin Furniture Factory	No.
Kunshan Lee Wood Product Co., Ltd	No.
Leefu Wood (Dongguan) Co., Ltd	No.
Link Silver Ltd. (V.I.B.)	No.
Locke Furniture Factory	No.
Marvin Furniture (Shanghai) Co., Ltd	No.
Meikangchi (Nantong) Furniture Co., Ltd	No.
Nantong Dongfang Orient Furniture Co., Ltd	No.
Nantong Yangzi Furniture Co., Ltd	No.
Nantong Yushi Furniture Co., Ltd	No.
Passwell Wood Corporation	No.
S.Y.C. Family Enterprise Co., Ltd	No.
Samso Industries Ltd	No.

Name	Separate rate as of latest completed segment of proceeding
Shanghai Aosen Furniture Co., Ltd	No.
Shanghai Fangjia Industry Co., Ltd	No.
Shanghai Hospitality Product Mfg., Co., Ltd	No.
Shanghai Sunrise Furniture Co., Ltd	No.
Shenzhen Xiande Furniture Factory	No.
Starwood Furniture Manufacturing Co., Ltd	No.
Taiwan Kai Chan Co., Ltd	No.
Tarzan Furniture Industries Ltd	No.
Tianjin Master Home Furniture Company	No.
Tradewinds International Enterprise Ltd	No.
Trendex Industries Ltd	No.
Wan Bao Chen Group Hong Kong Co., Ltd	No.
Well Earth International Ltd	No.
Winny Overseas, Ltd	No.
Winny Universal Ltd	No.
Xilinmen Group Co. Ltd	No.
Xingli Arts & Crafts Factory of Yangchun	No.
Yichun Guangming Furniture Co., Ltd	No.
Yongxin Industrial (Holdings) Limited	No.
Zhanjiang Sunwin Arts & Crafts Co., Ltd	No.
Zhong Shan Fullwin Furniture Co., Ltd	No.
Zhongshan Gainwell Furniture Co., Ltd	No.
Zhongshan Winny Furniture Ltd	No.

If one of the above named companies does not qualify for a separate rate, all other exporters of wooden bedroom furniture from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to the administrative review of the antidumping duty order on wooden bedroom furniture from the PRC which is being initiated through this notice. Parties that wish to participate in the antidumping duty administrative review of wooden bedroom furniture from the PRC should ensure that they meet the requirements in these procedures (*e.g.,* the filing of separate letters of appearance as discussed in 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[7] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011.[8] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 22, 2013.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–04683 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* section 782(b) of the Act.

[8] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*''Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule*, 76 FR 54697 (September 2, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. With respect to the antidumping duty order on Wooden Bedroom Furniture from the People's Republic of China, the initiation of the antidumping duty adminstrative review for that case is being published in a separate initiation notice.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site

at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
The People's Republic of China: Certain Cased Pencils,[3] A–570–827	12/1/11–11/30/12
The People's Republic of China: Multilayered Wood Flooring,[4] A–570–970	5/26/11–11/30/12
Nakahiro Jyou Sei Furniture (Dalian) Co. Ltd.	
Countervailing Duty Proceedings	
The People's Repubic of China: Certain Oil Country Tubular Goods, C–570–944	1/1/12–12/31/12
1st Huabei OCTG Machinery Co., Ltd.	
Adler Steel Limited.	
Adler Steel Limited Tianjin.	
China c/o Adler Steel Limited.	
Angang New Steel Co., Ltd.	
Angang Steel Co., Ltd.	
Anhui Tianda Oil Pipe Co. Ltd. and Anhui Tianda Enterprise (Group) Co. Ltd.	
Anshan Xin Yin Hong Petroleum and Gas Tubular Co.	
Anshan Zhongyou TIPO Pipe & Tubing Co., Ltd.	
Anton Oilfield Services (Group) Ltd.	
Anton Tongao Technology Industry Co. Ltd.	
Anyang Iron & Steel Group Ltd.—Seamless.	
Aofei Tele Dongying Import & Export Co., Ltd.	
Baoji Petroleum Steel Pipe and Tube Works.	
Baoji-Sumitomo Metal Industries (SMI) Petroleum Steel Pipe, Co. Ltd. (BSG).	
Baolai Steel Pipe and Tianjin.	
Baolai International Trade Co., Ltd.	
Baoshan Iron & Steel Co. Ltd.	
Precision Steel Tube Factory.	
Baoshan Iron & Steel Co. Ltd.	
Shanghai Baosteel Group Corporation and Steel Tubing Plant of Baosteel Branch.	
Baosteel America Inc.	
Baosteel Group Shanghai Steel Tube.	
Baosteel International (Shanghai Baosteel International Economic & Trading Co., Ltd.).	
Baotou Found Petroleum Machinery Co. Ltd.	
Baotou Iron & Steel (Group) Co., Ltd.	
Bazhou Hongyuan Petroleum Equipment Materials Co., Ltd.	
Bazhou Seamless Oil Pipe Co., Ltd.	
Bazhou Zhuofa Steel Pipe Co., Ltd.	
Beijing Bell Plumbing Manufacturing Ltd.	
Beijing Changxing Kaida Composite Material Development Co., Ltd.	
Beijing Jinghua Global Trading Co., Ltd.	
Beijing Shouhang Science-Technology Development Company.	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

[3] In the initiation notice that published on January 30, 2013 (78 FR 6291) the Department listed the incorrect case number for Certain Cased Pencil from PRC. The correct case number is listed above.

[4] This company was inadvertently omitted from the initiation notice that published on January 30, 2013 (78 FR 6291).

	Period to be reviewed
Beijing Youlu Co., Ltd.	
Beijing Zhongyou TIPO Material & Equipment Co., Ltd.	
Beiman Special Steel Co., Ltd.	
Benxi Northern Steel Pipe Co., Ltd.	
Bohai Equipment New Century Machinery Manufacturing Co., Ltd.	
Cangzhou City Baohai Petroleum Material Co., Ltd.	
Cangzhou City Shengdali Machinery Manufacture Co., Ltd.	
Cangzhou OCTG Company Limited of Huabei Oilfield.	
Cangzhou Qiancheng Steel Pipe Co., Ltd.	
Cangzhou Ruitai Petroleum Machinery Co., Ltd.	
Cangzhou Xinxing Seamless Steel pipe Co., Ltd.	
Changshu Chengfeng Machinery Manufacturing Co., Ltd.	
Changshu Lijia Import and Export Co.	
Changshu Seamless Steel Tube Co., Ltd.	
Changzhou Bao-Steel Tube Limited-Liability Co.	
Changzhou Darun Steel Tube Co., Ltd.	
Changzhou Haitong Petroleum Tube Co., Ltd.	
Changzhou Heji Engineering Machinery Co., Ltd.	
Changzhou Heyuan Steel Pipe Company.	
Changzhou Hong Ping Material Supply Co., Ltd.	
Changzhou Huixiang Petroleum Machinery Co., Ltd.	
Changzhou Jianzhou Machinery Co., Ltd.	
Changzhou Shengde Seamless Pipe Co., Ltd.	
Changzhou Steel Pipe Factory.	
ChangZhou TaoBang PetroleumTube Co., Ltd.	
Changzhou Tianda Petroleum Pipe Co., Ltd.	
Changzhou Tong Xing Steel Tube Co., Ltd.	
Changzhou Tongchuang Tube Industy Co., Ltd.	
Changzhou Wujin Furong Aluminum Alloy Profile Factory.	
Changzhou Yuanyang Steel Tube Co., Ltd.	
Chengde Longcheng Steel Pipe Manufacturing Co., Ltd.	
Chengdu Heyi Steel Tube Industrial Co., Ltd.	
Chengdu Wanghui Petroleum Pipe Co. Ltd.	
Chengdu Zhongyuan Zongji Petroleum Equipment Co., Ltd.	
China East Resources Import & Export Co., Ltd.	
China Hebei Xinyuantai Steel Pipe Co.	
China Oilfield Services Limited.	
Chongqing Petroleum Special Pipeline Factory of CNPC.	
Sichuan Petroleum Goods & Material Supply Corp.	
Chu Kong Steel Pipe Group Co.	
Chuanna Machinery Manufacturing Plant.	
Cloudstone Metal International Limited.	
CNOOC Energy Technology & Services—Pipe Engineering Co.	
CNOOC Kingland Pipeline Co., Ltd.	
CNPC Chuanqing Drilling Engineering Co., Ltd./changquing Downhold Technology Operation Co.	
CNPC Chuangquing Drilling Engineering Co., Ltd./Changqing General Drilling Company.	
CNP GWDC Drilling Tools Company.	
CORPAC Steel Products, Corp.	
Da An Heng Rui Productions Enquipment Co., Ltd.	
Da Qing Jing Tai mechanical Manufacturing Co., Ltd.	
Da'an Petroleum Accessories Factory.	
DADI Petroleum Machinery Co., Ltd. of Inner Mongolia First Machinery Group Co., Ltd.	
Dagang Oilfield Group New Century Machinery Manufacturing Co., Ltd.	
Dalipal Pipe Company.	
Daqing High-Tech Zone Hua Rui Ke Pipe Manufacturing Co.	
DaQing Ocean Petroleum Technology Development Co., Ltd.	
Daqing Petroleum Equipment Group.	
Daqing Powerlift Petro-Equipment Group.	
Daqing Seamless Oil Pipe Co., Ltd.	
Daqing Wanke Oilfield Equipment Manufacturing Co., Ltd.	
Daquing Powerlift Petro-equipment Group.	
Daye Xinye Special Steel Company Limited.	
De Zhou Guang Hua Petroleum Machinery Company Limited.	
De Zhou United Petroleum Machinery Company Limited.	
De Zhou Zhong Xing Petroleum Machinery Co., Ltd.	
Dexin Steel Tube (China) Co., Ltd.	
Dezhou Great Wall Petroleum Machinery Co., Ltd.	
Dezhou Hortzon Oil Tools Co., Ltd.	
Dezhou Longke Petroleum Equipment Co., Ltd.	
Dingbian County Huayou Trading Company Limited.	
Dong Ying East Petroleum Pipe Co., Ltd.	
Dongying City Jinyilai Petroleum Machinery Co., Ltd.	
Dongying City Meiyang Petroleum Pipe & Fitting Co., Ltd.	

	Period to be reviewed
Dongying City Paipu Petroleum Pipe Fittings Co., Ltd.	
Dongying City YongLiJingGong Petroleum Machinery Manufacturing Co., Ltd.	
Dongying Heli Petroleum Machinery Company Limited.	
Dongying Rui'ao Industrial Trading Co., Ltd.	
Dongying Tianlin Petroleum Equipment Co., Ltd.	
Dongying Tianrui Petroleum Science & Technology Co., Ltd.	
DP-Master Manufacturing Co., Ltd.	
DRK Oil Tools, Co., Ltd.	
Engineering Service Company of Great Wall Drilling Engineering Ltd. of China Petroleum Group.	
Etco (China) International Trading Co., Ltd.	
Faray Petroleum Steel Pipe Co., Ltd.	
Field Construction Bohai Equipment Services.	
First Machinery Works of North China Petroleum.	
Freet Petroleum Equipment Co. Ltd. of Shengli Oil Field The Thermal Recovery, Zibo Branch.	
Gaoyou Huaxing Petroleum Pipe Manufacturing Co., Ltd.	
Ge Steel Resource Ltd.	
General Machinery Factory of Jilin Petroleum Group Co., Ltd.	
General Machinery Plant of Shengli Petroleum Adminstration (Shengli Oil Field Shengli Petroleum Equipment Co., Ltd.).	
Guangzhou Hongda Steel Tube.	
Guangzhou Iron and Steel.	
Guangzhou Junjia Steel Tube Manufacturer Co., Ltd.	
Guangzhou Juyi Steel Pipes Company Limited.	
Guangzheng Branch of Tangshan Jidong Petroleum Machinery Company, Ltd.	
Haerbin City Weilian Mechanical Manufacturing Company Limited.	
Haicheng Northern Steel Pipe Anti-Corrosion Company Limited Haicheng Northern Steel Pipe Co. and Haicheng Beigang Pipe Group.	
Handan Precise Seamless Steel Pipes Co., Ltd.	
Hangzhou Cogeneration Import & Export Company Limited.	
Hangzhou Zhedong Steel Tube Products Co., Ltd.	
Hao Ying Qiqihaer in Northeast Special Steel Co., Ltd.	
Hebei ChangFeng Steel Tube Manufacture Group.	
Hebei Dingsheng Pipe Industry Co., Ltd.	
Hebei Hongling Seamless Steel Pipes Manufacturing Co., Ltd.	
Hebei Huike Steel Pipe Co., Ltd.	
Hebei Litonglian Seamless Steel Pipe.	
Hebei Machinery Import and Export Co., Ltd.	
Hebei Puyang Iron and Steel Company Limited.	
Hebei Tiandixing Pipeline Co., Ltd.	
Hebei Xinlian Petroleum Machinery Company Limited.	
Hebei Xinyuantai Steel Pipe Co., Ltd.	
Hebei Yaosheng Petroleum Special Pipe Co., Ltd.	
Hebei Yi Xin Petroleum Pipe Company Limited.	
Hebei Zewo Steel Pipe Manufacturing Co., Ltd.	
Hebei Zhong Kuang Steel Pipe Manufacturing Co., Ltd.	
Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd. and Zhongyuan Pipeline Manufacturing Co., Ltd.	
Hefei Ziking Steel Pipe Inc.	
Heilongjiang Jianlong Iron and Steel Co., Ltd.	
Heilongjiang North Shuangjia Drilling Tools Co., Ltd.	
Henan Dongfanlong Machine Manufacture Co., Ltd.	
Henan Huifeng Pipe Industry Co., Ltd.	
Henan Nanyang Oilfield Machinery Manufacturing Company Limited.	
Henan Province LiDa Petroleum Pipe Drilling Tools Co., Ltd.	
Henan Zyzj Petroleum Equipment Co., Ltd.	
Hengshui Jinghua Steel Pipe Co., Ltd.	
Hengshui Weijia Petroleum Equipment Manufacture Co., Ltd.	
Hengyang Hongda Special Steel Tube Co., Ltd.	
Hengyang Steel Tube (Group) Co., Ltd.	
Hengyang Valin Steel Tube Co. Ltd. and Hengyang Valin MPM Tube Co., Ltd.	
HG Tubulars Limited.	
Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.	
HillHead.	
Hilong Tubular Goods Co., Ltd.	
HSC (Chengdu) Seamless Steel Pipe Co., Ltd.	
Hsea Steel Trading Co., Ltd.	
Huai'an Zhenda Steel Tube Manufacturing Co., Ltd.	
Hubei OCTG Machinery Co. (First).	
Hubei Xinyegang Co., Ltd.	
Hubei Xinyegang Special Tube Co., Ltd.	
Hubei Zhongshi Special Steel Tubes Co., Ltd.	
Huizhou Dingjia Trade Co., Ltd.	
Huludao City Steel Pipe Industrial Co.	
Huludao Steel Pipe Industrial Co., Ltd.	

	Period to be reviewed
Hunting Energy Services (Wuxi) Co., Ltd.	
Jiangsu Benqiu Pipe Products Co.	
Jiangsu Changbao Steel Tube Co., Ltd and Jiangsu Changbao Precision Tube Co.Ltd.	
Jiangsu Chengde Steel Tube Share Co., Ltd.	
Jiangsu Dingxing Petroleum Machinery Co., Ltd.	
Jiangsu Fanli Steel Pipe Co.	
Jiangsu Huacheng Industry Group Co., Ltd.	
Jiangsu Huashun Steel Pipe Co., Ltd.	
Jiangsu Kailai Steel Tube Co., Ltd.	
Jiangsu Li'Ao Steel Tube Company Limited.	
Jiangsu Rontech Petroleum Technology Incorporated Company.	
Jiangsu Shined Petroleum Equipment Manufacturing Company Limited.	
Jiangsu Shuguang Oil Tools Limited.	
Jiangsu Sujia Group Co., Ltd.	
Jiangsu Tenglong Petrochemical Machinery Co., Ltd.	
Jiangsu Tianyuan Steel Tube Co., Ltd.	
Jiangsu Valin-Xigang Special Steel Co., Ltd.	
Jiangsu Wuxi Steel Group.	
Jiangsu Yulong Steel Pipe Co., Ltd.	
Jiangsu ZhenDa Steel Tube Group Co., Ltd.	
Jiangsu Zhongye Energy Equipment Manufacture Co., Ltd.	
Jiangyin Changjiang Oil Special Pipe Manufacture Co., Ltd.	
Jiangyin Chuangxin Oil Pipe.	
Jiangyin City Changjiang Steel Pipe Co., Ltd.	
Jiangyin City Seamless Steel Tube Factory.	
Jiangyin Hengyang Petroleum Machinery Company Limited.	
Jiangyin Jieda Shaped Tube Co., Ltd.	
Jiangyin Jieshun Metal Science & Technology Co., Ltd.	
Jiangyin Long-Bright Drill Pipe Manufacture Co., Ltd.	
Jiangyin Yashen Petroleum Pipe Co., Ltd.	
Jiangyin Yueyue Chao Steel Pipe Manufacture Co., Ltd.	
Jiangyin Yuhao Petroleum Pipe Co., Ltd.	
Jianhu Lichange Valve Co., Ltd.	
Jilin Baotong Petroleum Steel Pipe Company Limited.	
Jilin Qianyuan Steel Pipe Co., Ltd.	
Jilin Sky Loong Industry Co., Ltd.	
Jinan Iron and Steel Company Jigang Group Co., Ltd.	
Jinxi Industry Group Co., Ltd.	
Jinxi Steel Pipe Co., Ltd. of Lingyuan Iron and Steel Group.	
Jinxi Steel Pipe Xinjiang Co., Ltd.	
Jiquan Iron and Steel Group (JISCO).	
Julong Steel Pipe Co., Ltd.	
Laiwu Iron and Steel Corporation.	
Langfang OTSMAN Special Petroleum Pipe Manufacture Company Limited.	
Liangshan Steel Pipe Company Limited.	
Liaoche Thermal Recovery Machinery Branch of CNPC Bohai Equipment Manufacturing Co., Ltd.	
Liaocheng Jialong Tube Manufacture Company Limited.	
Liaocheng Jingxin Seamless Steel Pipe Manufacturing Co., Ltd.	
Liaocheng Xinpengyuan Metal Manufacture Co., Ltd.	
Liaocheng Dongyu Oil Tubular Goods Company, Ltd.	
Liaoning Foo May Oilfield Services Co., Ltd.	
Liaoning Large-scale Steel Pipe Co., Ltd.	
Liaoning Northern Steel Pipe Co., Ltd.	
Liaoning Shen Yu Oil Pipe Manufacture Company Limited.	
Liaoyang Seamless Oil Pipe Co., Ltd.	
Linggang Beipiao Steel Pipe Co., Ltd.	
Lingyuan Iron & Steel Company Limited.	
Linyi Jinzhengyang Seamless Steel Pipe Co., Ltd.	
Linyi Sanyuan Steel Pipe Industry Company Limited.	
Linyi Yinlong Steel Tube Co., Ltd.	
Linzhou Fengbao Pipe Industry Co., Ltd.	
Liuzhou Iron and Steel.	
M&M Steel Pipe Co., Ltd.	
Machinery Factory of Jilin Petroleum Group Co., Ltd.	
Machinery Factory of Tuha Petroleum.	
MCC Liaoning Dragon Pipe Industries Company Limited.	
Mechanical Factory of CNPC Qinghai Oilfield Company.	
Meihekou City Hongye Seamless Steel Pipe Co., Ltd.	
Mercadex B.V.	
MSP/Drilex, Inc.	
Nantong Hengte Tube Co., Ltd.	
Nantong Petroleum Machine Manufacturing Co., Ltd.	
Nantong Yongda Pipe Industry Incorporated Company.	

	Period to be reviewed
Nengyang Hongling Petroleum Pipe Co., Ltd.	
NHIC Antonoil Machinery Manufacturing Co., Ltd.	
Ning Xia D.M.S. OCTG Company Limited.	
Ningbo Hengfa Steel Tube Co., Ltd.	
Ningxia Daimus Petroleum Steel Pipe Co., Ltd., Tianjin Branch.	
Norms-ShenZhen HaiYou Mechanical Equipment Company.	
North China Petroleum Steel Pipe Co., Ltd.	
North China Petroleum Steel Pipe Co., Ltd. Yangzhou Subsidiary Company.	
Oilfield Services & Supplies (Tianjin) Co., Ltd.	
Pancheng Yihong Pipe Company Limited.	
Pangang Group Beihai Steel Pipe Corporation (PGBH).	
Pangang Group Chengdu Iron & Steel Co., Ltd.	
Pangang Group Chengdu Steel & Vanadium Co., Ltd.	
Panjin ChangTai Petroleum Tubular Co., Ltd.	
Panjin Liaohe Oilfield Jinhuan Company Corporation Ltd.	
Panjin Renhe Pipe Co., Ltd.	
Panjin Xinhua Drilling Machinery Manufacture Co., Ltd.	
Panshi City Great Wall Mechanical Factory.	
Panyu Chu Kong Steel Pipe Co., Ltd.	
Petroleum Machinery Factory of Bohai Petroleum Manufacturing Co., Ltd.	
PetroMaterials (Cangzhou) Co., Ltd.	
Pipe and Tooling Center, Sinopec Southwest Company.	
Pipes & Tools of No. 2 Drilling Technical Company Of Da Qing CN.	
Precision Pipe Manufacturing Branch of Liaoning Tianyi Industry Company.	
PuYang BaoLiTong Petroleum Machinery Co., Ltd.	
Puyang City Huang Jin-Drilling Parts Processing Co., Ltd.	
Puyang City Shuangfa Industry.	
Puyang Heli Drilling Machinery Processing Co., Ltd.	
Puyang Xinyu Petro-chemical Machinery Co., Ltd.	
Puyang Zhongshi Group Co., Ltd.	
Qingdao Kehua Petroleum Machinery Co., Ltd.	
Qiqihaer Haoying Iron & Steel Co of Northeast Special.	
Rizhao Steel Holding Group Co., Ltd.	
RiZhao ZhongShun Steel Pipe Manufacture Company Limited.	
RongSheng Machinery Manufacture Ltd.	
Seamless Tube Mill of Baotou Steel Union.	
Shaanxi Jiabao Petroleum Machine Manufacture Co., Ltd.	
Shaanxi Qindong Tubular Goods Manufacturing Co., Ltd.	
Shaanxi Yanchang Petroleum Equipment Manufacturing Co., Ltd.	
Shaanxi Yanchang Petroleum Material Company.	
Shandong Continental Petroleum Equipment Co., Ltd.	
Shandong Dongbao Steel Pipe Co., Ltd.	
Shandong Dongying Liyuan Pipe Industry Group Co., Ltd.	
Shandong East China Petroleum Pipes & Drilling Tools Co., Ltd.	
Shandong East Oil Petroleum Equipment Co., Ltd.	
Shandong Huabao Steel Pipe Co., Ltd.	
Shandong Huitong Steel Tube Making Co., Ltd.	
Shandong Jialong Petroleum Pipe Manufacture Co., Ltd.	
Shandong Liaocheng Baotong Steel Tube Manufacture Co., Ltd.	
Shandong Liaocheng Shenhao Metal Product Co., Ltd.	
Shandong Liaocheng ZGL Metal Manufacturing Co., Ltd.	
Shandong Luhai Petroleum Equipment Co., Ltd.	
Shandong Luxing Steel Pipe Co., Ltd.	
Shandong Mingzhu Petroleum Equipment Co., Ltd.	
Shandong Molong Petroleum Machinery Co., Ltd.	
Shandong Nine-Ring Petroleum Machinery Co., Ltd.	
Shandong Province Coalfield Geologic Drilling Tools Factory.	
Shandong Province Jin Shun Steel Product Limited Company.	
Shandong Runhe Tube Industry Co., Ltd.	
Shandong Shengdong Oilfield Machinery Co., Ltd.	
Shandong Shengli Tongxing Petroleum Pipe Manufacture Co., Ltd.	
Shandong Shengyou Oil Drilling & Production Machinery Limited Company.	
Shandong Shouguang JuNeng Special Steel Co., Ltd.	
Shandong Taifeng Steel Industry Co., Ltd.	
Shandong Xinchi Steel Pipe Manufacture Co., Ltd.	
Shandong Xinji Yiming Machinery Co., Ltd.	
Shandong Zhao Yu Petroleum Pipe Manufacture Co., Ltd.	
Shandong Zhongli Steel Pipe Co., Ltd.	
Shandong Zhongye Petroleum Machinery Co., Ltd.	
ShanDong ZhongZheng Steel Pipe Manufacturing Co., Ltd.	
Shanghai Baochen Oil Pipeline Materials Company Limited.	
Shanghai Baodi Petroleum Pipe Development Co., Ltd.	
Shanghai Baofu Steel Pipe Co., Ltd.	

	Period to be reviewed
Shanghai Baoshun Steel Tube Co., Ltd.	
Shanghai Baoyan Special Steel Pipe Co., Ltd.	
Shanghai Baoyi Industrial Company.	
Shanghai Fanzhenglong Steel Tube Co., Ltd.	
Shanghai Hilong Drill Pipe Co., Ltd.	
Shanghai Hongshun Tube Manufacturing Co., Ltd.	
Shanghai Kangxin Oil Pipe Manufacturing Co., Ltd.	
Shanghai Metals & Minerals Import & Export Corporation.	
Shanghai Mingsheng Industrial Co., Ltd.	
Shanghai STARSE Petroleum Equipment Co., Ltd.	
Shanghai Tianhe Oil Engineering Co., Ltd.	
Shanghai W.M Threading Co., Ltd.	
Shanghai Yuanxin Tube Co., Ltd.	
Shanghai Yueyuechao Manufacture Tube Co., Ltd.	
Shanghai Yuezhou Steel Co., Ltd.	
Shanghai Zhongyou TIPO Steel Pipe Co., Ltd.	
Shanxi Dehui Seamless Steel Pipe Co., Ltd.	
Shanxi Guolian Pipe Industry Group Co., Ltd.	
Shanxi Hongli Steel Tube Share Company Limited.	
Shanxi Taigang Stainless Steel Tubes & Pipes Co., Ltd.	
Shanxi Yida Petroleum Manufacture Co., Ltd.	
Shanxi Yuci Guolian Steel Pipe Co., Ltd.	
Shelfoil Petroleum Equipment & Services Co., Ltd.	
Shengli Fanland Petroleum Equipment Co., Ltd.	
Shengli Oil Field Shengli Power Machinery Group Co., Ltd.	
Shengli General Engineering (The Thermal Recovery Equipment Manufactory of Shengli General Engineering).	
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	
Shengli Oil Field Highland Petroleum Equipment Co., Ltd.	
Shengli Oil Field TianFeng Science, Industry & Trade Steel Structure Co., Ltd.	
Shengli Oil Field Whuhua Industry Development Co., Ltd.	
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd.	
Shengli Petroleum Administration General Machinery Plant.	
Shengli Petroleum Equipment Co., Ltd.	
Shenyang Dongming Seamless Steel Tube Co., Ltd.	
Shenyang Special Type Seamless Steel Tube Co., Ltd.	
Shenzhen Renjunfeng Enterprise Co., Ltd.	
Shenzhen Weisheng I.T.S. Petroleum Tubular & Equipment Co., Ltd.	
Siano (Beijing) Steel Co., Ltd.	
Sichuan ChangCheng Steel Tube Co., Ltd.	
Sichuan ChenJiWeiYe Steel Pipe Co., Ltd.	
Sichuan Huagong Petroleum Steel Pipe Co., Ltd.	
Sichuan Jingshi Engineering Technology Co., Ltd.	
Songyuan Daduo Oilfield Accessory Industry Co., Ltd.	
Songyuan Seamless Oil Pipe Co., Ltd.	
SPAT Steel International (H.K.) Limited.	
Steel Pipe Plant of Wisco Wuhan Jiangbei Iron and Steel Co., Ltd.	
Steel Pipe Works of North China Petroleum.	
Steelforce Far East Ltd.	
Stiletto (HK) Limited.	
Suns Steel International (Group) Co., Ltd., Shanghai Suns Steel International Trading Ltd., and Shanghai Suns Steel International Ltd.	
Suzhou Baoxin Seamless Steel Tube.	
Suzhou Friend Tubing and Casing Pipe Co., Ltd.	
Suzhou Rainbow Huading Chimney Manufacturing.	
Suzhou Seamless Steel Tube Works and Suzhou Shuangjin Group Corporation.	
Suzhou Sino Import and Export Co., Ltd.	
Tai'an Jiecheng Equipment Installation Co., Ltd.	
Taicang Xinbaoyi Steel Pipe Manufacture Co., Ltd.	
Taizhou Chengde Steel Tube Co., Ltd.	
Taizhou Elite Drilling Pipe Co., Ltd.	
Taizhou Shuangyang Precision Seamless Steel Tube Co., Ltd.	
Tangshan Jointer Petroleum Pipe Manufacture Co., Ltd.	
Tangshan Sanjin Mingsheng Industry Development Co., Ltd.	
Tangshan Wenfeng Qiyuan Pipe Industry Co., Ltd.	
The Freet Group.	
The Machinery Plant, Tuha Oilfield Company.	
Thermal Recovery Equipment Manufacturer of Shengli Oil Field Freet Petroleum Equipment Co., Ltd.	
Tian Jin Costrength Petrol China Machinery Co., Ltd.	
Tianhe Oil Group Hifeng Petroleum Equipment Co., Ltd.	
Tianjin Amergy (Meineng) Fittings Co., Ltd.	
Tianjin Bond Oil Steel Pipe Manufacturing Co., Ltd.	
Tianjin Boyu Steel Pipe Co., Ltd.	
Tianjin City Gang Xin Seamless Pipe Industry Company.	

	Period to be reviewed
Tianjin City Jinghai County Baolai Industrial and Trade Co.	
Tianjin City Juncheng Seamless Tube Company Limited.	
Tianjin City Mingren Metallic Products Co., Ltd.	
Tianjin City Tian Yi Seamless Steel Tube Company Limited.	
Tianjin Coupling Heat Treatment Company Limited.	
Tianjin Debang Petroleum Pipe Manufacturing Co., Ltd.	
Tianjin DeHua Petroleum Equipment Manufacturing Company Limited.	
Tianjin Delisi Steel Tube Products Co., Ltd.	
Tianjin Denuo Petroleum tube Co., Ltd.	
Tianjin Evergrand Oil Pipes Co., Ltd.	
Tianjin Feng Yi Da General Machinery Company Limited.	
Tian-Jin Holly land Pipe Co., Ltd.	
Tianjin Hong Gang Yuan Oil Equipment Manufacturing Co., Ltd.	
Tianjin Hua Xin Premium Connections Pipe Co., Ltd.	
Tianjin Huilitong Steel Tube Co., Ltd.	
Tianjin Jinggong Petroleum Pipe Fittings Co., Ltd.	
Tinajin Jingtong Seamless Steel Pipe Co., Ltd.	
Tianjin Jinyingda Plastic Product Co., Ltd.	
Tianjin Jinyuan Machinery Manufacture Co., Ltd.	
Tianjin Lida Steel Pipe Group Co., Ltd.	
Tianjin Lifengyuanda Steel Group Co., Ltd.	
Tianjin Liqiang Steel Pipe Co.	
Tianjin Master Seamless Steel Pipe Co., Ltd.	
Tianjin Minghai Petroleum Tubular Co., Ltd.	
Tianjin Opka Oil Pipe Co., Ltd.	
Tianjin Pipe Group Corporation.	
Tianjin Pipe Industry Development Company.	
Tianjin Pipe International Economic & Trading Corp.	
Tianjin Rainbox Steel Pipe Product Corporation.	
Tianjin Ring-Top Petroleum Manufacture Co., Ltd.	
Tianjin Seamless Steel Pipe Plant.	
Tianjin SERI Machinery Equipment Corporation Limited.	
Tianjin Shengcaiyuan Steel Trading Co., Ltd.	
Tianjin Shenzhoutong Steel Pipe Co. Ltd.	
Tianjin Shuangjie Pipe Manufacturing Co., Ltd.	
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	
Tianjin Tiansheng Petroleum Pipe Manufacturing Co., Ltd.	
Tianjin Tianye Seamless Steel Pipe Plant Ltd.	
Tianjin Top Connect Manufacturing Co., Ltd.	
Tianjin TPCO & TISCO Welding Pipe Corporation.	
Tianjin Tubular Goods Machining Co., Ltd.	
Tianjin United Steel Pipe Co (UNISTEEL).	
Tianjin Walt Pipe Co., Ltd.	
Tianjin Xingyuda Steel Pipe Co., Ltd.	
Tianjin Zhongshun Industry Trade Co., Ltd.	
TianJin ZhongShun Petroleum Steel Pipe Co., Ltd.	
Tianjing Boyu Steel Tube Co., Ltd.	
Tieling Yida Petroleum Machinery Manufacture Co., Ltd.	
TLD International.	
Tonghua Iron & Steel Group Panshi Seamless Steel Tube Company Limited.	
TPCO Yuantong Pipe and Tube Corporation Limited.	
Tuha Petroleum Machinery.	
UNI Tube Ltd.	
United Offshore Construction Co. Ltd CONHW, Zhanjiang.	
Uno-Steel (Jiangyin) Drilling Products Manufacturing Limited.	
Weifang East Pipe Industry Technical Co., Ltd.	
Weifang Weierds Steel Pipe Co., Ltd.	
Westcan Oilfield Supply Ltd.	
WSP Holding Limited.	
Wuhan Seamless Oil Steel Tube Co., Ltd.	
Wuhan Wugang Group Hanyang Steel Factory.	
Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd.	
Wuxi City DongQun Steel Tube Co.	
Wuxi City Jianhong Metal Products Co., Ltd.	
Wuxi DeRui Seamless Steel Pipe Co., Ltd.	
Wuxi Dexin Steel Pipe Co., Ltd.	
Wuxi Dingyuan Precision Cold-Drawn Steel Pipe Co.	
Wuxi Eastsun Petroleum Tubular Manufacturing Co., Ltd.	
Wuxi Endlesss Petro Geo-Equipment Co., Ltd.	
Wuxi Erquan Special Steel.	
Wuxi Fanyong Liquid Presses Tube Company Limited.	
Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	
Wuxi Fastube Industry Co.	

	Period to be reviewed
Wuxi Free Petroleum Tubulars Manufacture Co., Ltd.	
Wuxi Gedemei Oil Machinery Equipment Manufacture Co., Ltd.	
Wuxi Horizon Petroleum Special Pipe Manufacture Company Limited.	
Wuxi Huaxin Petroleum Machine Co., Ltd.	
Wuxi Huayou Special Steel Co., Ltd.	
Wuxi Huazin Petroleum Machine Company Limited.	
Wuxi Hui Long Wufeng Steel Tube Limited Company.	
Wuxi Jiangnan High Precision Pipe Co., Ltd.	
Wuxi Jinding Oil Pipe Fittings Co., Ltd.	
Wuxi OuLong Special Steel Pipe Co., Ltd.	
Wuxi Precese Special Steel Co., Ltd.	
Wuxi Ruiyuan Special Steel Pipe Company Limited.	
Wuxi Runfeng Special Pipe Co., Ltd.	
Wuxi Seamless Oil Pipe Co., Ltd.	
Wuxi SP Steel Tube Manufacturing Co. Ltd.	
Wuxi Special Steel Material Co., Ltd.	
Wuxi Sunshine Textile Science and Technology Co., Ltd.	
Wuxi Xijin Petroleum Equipment Fittings Manufacturing Co. Ltd.	
Wuxi Xingya Seamless Steel Tube.	
Wuxi Zhen Dong Steel Pipe Works.	
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd. and Wu Xi Zhen Da Special Steel Tube Manufacturing Co., Ltd.	
Xi'an Hangwei Petrochemical Equipment Co., Ltd.	
Xi'an Changqing Tianhe Petroleum Machinery Co., Ltd.	
Xigang Seamless Steel Tube Co., Ltd.	
XiNing Special Steel Co., Ltd.	
Xinjiang Petro Administration Bureau Machinery Manufacture General Company.	
Xinjiang Ster Petroleum Tubes and Pipes Manufacturing Co., Ltd.	
Xinjiang Younaite Petroleum Steel Tube Co., Ltd.	
Xinxiang Central Plain Petroleum and Chemical Machine Manufacturing Co., Ltd.	
Xinxing Ductile Iron Pipes Co., Ltd.	
Xinyuantai Steel Pipe Group Co., Ltd.	
Xuzhou E&R Petroleum Equipment Co., Ltd.	
Xuzhou Guanghuan Steel Tube (Group) Co., Ltd.	
Xuzhou Guanghuan Steel Tube Co., Ltd.	
Xuzhou Oilfield Equipment Co., Ltd.	
Xuzhou Taifeng Oilwell Products Co., Ltd.	
Yan'an JiaSheng Petroleum Machinery Co., Ltd.	
Yan'an Shoushan Mechanical and Production Engineering Technology Co., Ltd.	
Yancheng Steel Tube Co., Ltd.	
Yancheng Teda Special Pipe Co., Ltd.	
Yangxin Universal Electromechanical Equipment Co., Ltd.	
Yangzhou BaoRuiDe Petroleum Machinery Co., Ltd.	
Yangzhou Chengde Steel Pipe Co., Ltd.	
Yangzhou Chicheng Petroleum Machinery Co., Ltd.'	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Yangzhou Sinopetro Superbskill Machine Co., Ltd.	
Yangtai KIYOFO Seamless Steel Pipe Company Limited.	
Yantai Steel Pipe Co., Ltd. of Laiwu Iron & Steel Group.	
Yantai Yuanhua Steel Tubes Company Limited.	
Yieh Corporation.	
YingKou OuYang Metal Manufacturing Co., Ltd.	
Zhangjiagang HengFeng Oil Pipe & Part Co., Ltd.	
Zhangjiagang ZhongYuan Pipe-Making Co.	
Zhangjiakou Haite Steel Pipe Co., Ltd.	
Zhangzhou Stronghold Steel Works Co., Ltd.	
Zhejiang Guobang Steel Co., Ltd.	
Zhejiang Jianli Co., Ltd.	
Zhejiang JiuLi Hi-Tech Metals Co., Ltd.	
Zhejiang Kingland Pipe Industry Co., Ltd.	
Zhejiang Minghe Steel Pipe Co., Ltd.	
Zhejiang Seamless Steel Tube Co., Ltd. and Zhejiang Gross Seamless Steel Tube Co. Ltd.	
Zhongshi Special Steel Tubes Co., Ltd.	
Zhongyuan Pipeline Manufacturing Co., Ltd.	
Zibo Hongyang Petroleum Equipment Co., Ltd.	
Zibo Pipe Manufacturing.	
ZYZJ Petroleum Equipment Co., Ltd.	
Suspension Agreements	
RUSSIA: Certain Cut-To-Length Carbon Steel Plate, A–821–808	1/1/12–12/31/12

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: February 22, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–04681 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC527

Pacific Fishery Management Council (Pacific Council); March 5–11, 2013 Pacific Council Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet March 5–11, 2013. The Pacific Council meeting will begin on Thursday, March 7, 2013, at 8 a.m., reconvening each day through Monday, March 11, 2013. All meetings are open to the public, except a closed session will be held at the end of the scheduled agenda on Saturday, March 9 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business. In addition to the formal, numbered agenda items, there will be an informal Council informational session on the morning of Thursday, March 7 to help with understanding various issues and objectives associated with developing a new management process for groundfish fisheries under Amendment 24.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the Hotel Murano, 1320 Broadway Plaza, Tacoma, Washington 98402; telephone: 888–862–3255. The Pacific Council address is Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204 toll free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order.

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Open Comment Period
  1. Comments on Non-Agenda Items
C. Salmon Management
  1. Review of 2012 Fisheries and Summary of 2013 Stock Abundance Forecasts
  2. Identification of Management Objectives and Preliminary Definition of 2013 Salmon Management Alternatives
  3. National Marine Fisheries Service Report
  4. Council Recommendations for 2013 Management Alternative Analysis
  5. Further Council Direction for 2013 Management Alternatives
  6. Adoption of 2013 Management Alternatives for Public Review
  7. Salmon Hearings Officers
D. Coastal Pelagic Species Management
  1. Exempted Fishing Permits for 2013
E. Habitat
  1. Current Habitat Issues
F. Administrative Matters
  1. Research Planning
  2. Approval of Council Meeting Minutes
  3. Membership Appointments and Council Operating Procedures
  4. Future Council Meeting Agenda and Workload Planning
G. Pacific Halibut Management
  1. Report on the International Pacific Halibut Commission Meeting
  2. Pacific Halibut Management South of Humbug Mountain
  3. Incidental Catch Regulations for the Salmon Troll and Fixed Gear Sablefish Fisheries
H. Groundfish Management
  1. NMFS Report
  2. Status Determination Criteria for Data-Moderate Stocks
  3. Consideration of Inseason Adjustments, Including Carryover
  4. Amendment 24: Improvements to the Groundfish Management Process
I. Highly Migratory Species Management
  1. NMFS Report
  2. Swordfish Management Report on Potential Changes to the Turtle Conservation Area and Take Limits
  3. Recommendations for International Management Activities
J. Enforcement Issues
  1. Current Enforcement Issues

Schedule of Ancillary Meetings

Day 1—Tuesday, March 5, 2013

Scientific and Statistical Committee Groundfish Subcommittee 9 a.m.

Day 2—Wednesday, March 6, 2013

Washington State Delegation 7 a.m.
Groundfish Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Habitat Committee 8:30 a.m.

Day 3—Thursday, March 7, 2013

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Management Team 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Enforcement Consultants 4:30 p.m.
Tribal Policy Group As Needed.
Tribal and Washington Technical Group As Needed.

Day 4—Friday, March 8, 2013

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee Economic Subcommittee 8:30 a.m.
Enforcement Consultants As Needed.
Tribal Policy Group As Needed.
Tribal and Washington Technical Group As Needed.

Day 5—Saturday, March 9, 2013

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Needed.
Tribal Policy Group As Needed.
Tribal and Washington Technical Group As Needed.

Day 6—Sunday, March 10, 2013

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Needed.
Tribal Policy Group As Needed.
Tribal and Washington Technical Group As Needed.

Day 7—Monday, March 11, 2013

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Needed.
Tribal Policy Group As Needed.
Tribal and Washington Technical Group As Needed.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: February 26, 2013.

William D. Chappell,

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

[FR Doc. 2013–04783 Filed 2–26–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC518

Endangered Species; File No. 17506

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Karen G. Holloway-Adkins, East Coast Biologists, Inc. P.O. Box 33715, Indialantic, FL 32903, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), and leatherback (*Dermochelys coriaceae*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before April 1, 2013.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17506 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division:

- By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email),
- By facsimile to (301)713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a 5-year research permit to continue to characterize the population of sea turtles that utilize the nearshore hard bottom reefs in Brevard County, FL. Up to 50 green and six loggerhead sea turtles would be tangle netted, dip netted or hand-captured annually. Captured sea turtles would be flipper and passive integrated transponder

tagged, measured, weighed, tissue and blood sampled and photographed. Foraging samples would be collected by lavage from 25 of the green sea turtles annually. Each year up to 15 of the juvenile green sea turtles would have an acoustic transmitter attached to the carapace for tracking movements. In addition to captures, green, loggerhead, hawksbill, Kemp's ridley, and leatherback sea turtles would be counted during vessel surveys in the nearshore waters of Florida and Georgia.

Dated: February 20, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–04404 Filed 2–27–13; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the Learn and Serve Progress Report. The Learn and Serve grantees submit this progress report via eGrants. Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 29, 2013.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Field Liaison/LSA. Attention: Sylvie Mortimer, Field Liaison Specialist; 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3475, Attention: Sylvie Mortimer, Field Liaison Specialist.

(4) Electronically through www.regulations.gov. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sylvie Mortimer, (202) 606–6749 number, or by email at *smortimer@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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.
- Minimize the burden of the collection of information on those who are expected to respond, including 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).

Background: The Learn and Serve grantees submit this progress report via eGrants. The Learn and Serve program staff will use the information to monitor progress, and to respond to requests from Congress and other stakeholders.

Current Action: CNCS seeks to renew the current information collection. The information collected in the Grantee Progress Report may be used by the Corporation's Office of Public Affairs to promote service. Learn and Serve program staff will use the information to monitor progress, and to respond to requests from Congress and other stakeholders. Some information provided in the Progress Report may be used by the Corporation's Office of Public Affairs to promote service. Program staff also use the information to identify trends and issues that may lead to changes in policies and procedures, allocation of training and technical assistance, or opportunities for peer learning.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 7/31/2013.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve Progress Report Information Collection.

OMB Number: 3045–0089.

Agency Number: None.

Affected Public: The public affected are the beneficiaries of the Learn and Serve grants and their broad communities.

Total Respondents: Twenty-three grantees will respond to this information request.

Frequency: One final progress report for each grantee.

Average Time per Response: Averages 30 minutes.

Estimated Total Burden Hours: 11.5 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 19, 2013.

Mike Berning,

Director, Office of Field Liaison.

[FR Doc. 2013–04609 Filed 2–27–13; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Delta Wetlands Project in San Joaquin and Contra Costa Counties, CA, Corps Permit Application Number SPK–1901–09804

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: Delta Wetland Properties (Applicant) has applied for a Department of Army permit under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 (R & H A) to develop two Reservoir Islands (Bacon Island and Webb Tract). Applications with the Department of Army under Section 404 of the CWA for the discharge of dredged or fill material into waters of the United States and under the Rivers and Harbors Act (RHA) Section 10 for activities within navigable waters were first filed with the U.S. Army Corps of Engineers (Corps) in 1987. The U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) issued no-jeopardy Biological Opinions (BOs) for the project in May and June 2000. The Corps issued a Department of the Army Permit under CWA Section 404 (Permit 190109804) for the project on June 26, 2002. Permit 190109804 required that construction be completed by December 31, 2007. The applicant is applying for a new permit for the project because the previously issued permit has expired.

The Corps has determined that a Supplement to the Environmental Impact Statement (EIS) for the Delta Wetlands Project (prepared in 2001) is required. Delta Wetland Properties has applied for a new Department of the Army permit to fill approximately 2,156 acres of waters of the United States, including wetlands, to implement the project.

DATES: The Corps will conduct a public scoping meeting that will be held on Monday, March 11, 2013 from 4:00 p.m. to 7:00 p.m.

ADDRESSES: The public scoping meeting will be held at the Tsakopoulos Galleria Library located at 828 I Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Fugler, (916) 557–5255, *mailto: marc.a.fugler@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit written comments on the permit application on or before March 20, 2013. Scoping comments should be submitted within the next 60 days, but may be submitted at any time prior to publication of the Supplemental Draft EIS. To submit comments on this notice or for questions about the proposed action and the Supplemental Draft EIS, please contact Marc Fugler, 1325 J Street, Sacramento, CA 95814–4708. Parties interested in being added to the Corps' electronic mail notification list for the proposed project can email a request to *spk-regulatory-info@usace.army.mil* and indicate which list you would like your email address to be added. Please refer to Identification Number SPK–1901–09804 in any correspondence.

The Applicant's Preferred Alternative is generally the same as described in the 2001 EIS (available at *http://www.deltawetlandsproject.com*) and the Department of the Army permit for the project issued in 2002. Since 2002, the applicant has entered into a partnership with Semitropic Water District Storage (Semitropic) to develop the project, to integrate the project into the operation of the Semitropic Groundwater Storage Bank and the Antelope Valley Water Bank, and to provide project water for agricultural uses within Semitropic's service area.

Activities that would result in the discharge of dredged or fill material into waters of the U.S. on the Reservoir Islands interiors consist of the construction of new intake and discharge facilities, new boat berthing facilities adjacent to each intake and discharge facility, and interior grading and perimeter levee improvements. Activities that would result in work in navigable waters adjacent to the Reservoir Islands consist of the placement of new intake facilities and installation of fish screens, new boat berthing facilities adjacent to each intake and discharge facility, and new pumps and outfalls to discharge water stored in the reservoirs into the Delta. Compensation for wetland and wildlife effects of the water storage operations on the Reservoir Islands would be provided by implementing a Habitat Management Plan (HMP) on two Habitat Islands (Bouldin Island and the majority of Holland Tract). Bacon Island and Bouldin Island are located in San Joaquin County and Holland Tract and Webb Tract are located in Contra Costa County.

A wetland delineation for the project islands verified by the Corps in April 2002 identified a total of 860.47 acres of jurisdictional waters. This delineation expired in 2007 and an updated delineation was conducted for the project islands in 2012. The updated delineation identifies a total of 3,851.70 acres of potentially jurisdictional features. The primary differences in the verifications consist of the reclassification of ''exotic marsh'' in the 2002 delineation to freshwater marsh and the addition of two wetland types: Agricultural wetlands and forested wetlands. The updated delineation identifies the following acreages of potentially jurisdictional waters on the project islands: Bacon Island 572.69 acres, Webb Tract 1,583.61 acres, Holland Tract 996.28 acres, and Bouldin Island 699.12 acres. The applicant proposes to fill approximately 2,156 acres of potentially jurisdictional waters on the Reservoir Islands. Impacts would be mitigated through implementation of the HMP which would create or enhance (net) 1,147 acres of wetlands and other waters of the U.S. on the Habitat Islands. In addition, any wetlands not filled by levee improvements, intake construction, or mass grading on the Reservoir Islands would be converted to seasonally open water habitat (lacustrine).

The Supplemental EIS will include alternatives to the Proposed Action that will meet NEPA requirements for a reasonable range of alternatives, and will also meet the requirements of the *CWA Section 404(b)(1) Guidelines.* The alternatives to be evaluated in the Supplemental EIS are anticipated to consist of the following: (1) An alternative with different operating criteria for diversion and discharge of stored water, (2) the project as proposed in the 404 permit application (i.e., the Applicant's Preferred Alternative), (3) an alternative in which all four islands would be used as reservoirs with some compensation habitat provided on Bouldin Island, and (4) the No Project Alternative in which the four islands would continue to be used for intensive agricultural operations.

The Corps' public involvement program includes several opportunities to provide oral and written comments on the proposed Delta Wetlands Project through the NEPA process. Affected federal, state, regional, and local agencies, Native American tribes, and other interested organizations and parties are invited to participate. Potentially significant issues to be analyzed in depth in the Supplemental EIS include loss of waters of the United States (including wetlands), and impacts related to water supply, water quality, utilities and public services, traffic and navigation, fish, vegetation and wetlands, wildlife, land use and agriculture, recreation, visual resources, air quality, climate change, and socioeconomics.

The Corps will reinitiate formal consultation with USFWS and NMFS under Section 7 of the Endangered Species Act for impacts to listed species that may result from the project. The Corps will also reinitiate consultation with the State Historic Preservation Office under Section 106 of the National Historic Preservation Act for properties listed or potentially eligible for listing on the National Register of Historic Places, as appropriate.

The Supplemental EIS is expected to be made available to the public in 2013.

Dated: February 13, 2013.

William J. Leady,

Colonel, U.S. Army, District Engineer.

[FR Doc. 2013–04722 Filed 2–27–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meetings for the Draft Environmental Impact Statement and Draft Clean Air Act General Conformity Determination for U.S. Navy F–35C West Coast Homebasing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations (CFR) parts 1500–1508), the Department of the Navy (DoN) has prepared and filed with the U.S. Environmental Protection Agency (USEPA) a Draft Environmental Impact Statement (EIS). The Draft EIS evaluates the potential environmental effects that may result from homebasing the U.S. Navy F–35C (Joint Strike Fighter) aircraft at either Naval Air Facility (NAF) El Centro, California or Naval Air Station (NAS) Lemoore, California.

In addition, pursuant to the USEPA's Clean Air Act (CAA) General Conformity Regulations (40 CFR part 93, subpart B), the DoN has prepared a Draft CAA General Conformity Determination, which is included in the Draft EIS, to address air emission impacts associated with proposed F–35C homebasing.

With the filing of the Draft EIS (including the Draft CAA General Conformity Determination), the DoN is initiating a 60-day public comment period beginning on February 15, 2013 and ending on April 22, 2013. During this period, the DoN will conduct two public meetings to receive oral and written comments on the Draft EIS and Draft CAA General Conformity Determination. This notice announces the dates, times, and locations of the public meetings and provides supplementary information about the environmental planning effort.

DATES: Public information and comment meetings will be held by the DoN to provide individuals with information on the Draft EIS and Draft CAA General Conformity Determination in an open house format. DoN representatives will be available at informational poster stations during the public meetings to clarify information related to the Draft EIS. The public meetings will be held between 5:00 p.m. and 8:00 p.m. at each of the locations and dates listed below:

1. Tuesday, March 19, 2013 at Lemoore Civic Auditorium, 435 C Street, Lemoore, California 93245.
2. Thursday, March 21, 2013 at Southwest High School, Multipurpose Room, 2001 Ocotillo Drive, El Centro, California 92243.

Federal, state, and local agencies and officials, and interested groups and individuals are encouraged to provide comments in person at the public meetings or in writing anytime during the public comment period. At the public meetings, attendees will be able to submit comments in writing and orally to a stenographer who will listen to and transcribe comments. All statements submitted during the public review period, whether oral or written, will be given equal consideration, become part of the public record on the Draft EIS, and be responded to in the Final EIS. Comments received on the Draft General Conformity Determination during the 60-day public comment period will be considered fully before the DoN makes a Final General Conformity Determination. Written comments may be submitted via the U.S. Postal Service or electronically as described below.

ADDRESSES: A copy of the Draft EIS for U.S. Navy F–35C West Coast Homebasing (with the Draft CAA General Conformity Determination) is available for electronic viewing or download at *www.navyf35cwestcoasteis.com.* Comments on the Draft EIS and Draft CAA General Conformity Determination can be submitted electronically via the project Web site or in writing to: Naval Facilities Engineering Command, Southwest, Attn: Code EV21.AK (F–35C EIS Project Manager), 1220 Pacific Highway, Building 1, 5th Floor, San Diego, CA 92132. All written comments must be postmarked or received online by April 22, 2013 to ensure they become part of the official record.

A paper copy of the Executive Summary or a single compact disc of the Draft EIS with the Draft CAA General Conformity Determination will be made available upon written request to the address above.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command, Southwest, Attn: Code EV21.AK (F–35C EIS Project Manager), 1220 Pacific Highway, Building 1, 5th Floor, San Diego, CA 92132.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this Draft EIS was published in the **Federal Register** on January 28, 2011 (76 FR 5144). The DoN proposes to provide facilities and functions on the West Coast of the United States to support homebasing F–35C aircraft in the U.S. Navy Pacific Fleet. The purpose of the proposed action is to replace aging DoN Pacific Fleet FA–18 aircraft with F–35C aircraft while meeting pilot training and readiness requirements.

The Draft EIS evaluates the potential environmental effects of three alternatives, including the No Action Alternative and two action alternatives. Alternative 1 analyzes F–35C homebasing at NAF El Centro. Alternative 2 analyzes F–35C homebasing at NAS Lemoore. The analysis addresses aircraft replacement and transition, facility and infrastructure requirements, personnel requirements, and aircraft operations in the airfield environment and in airspace within the vicinity of each installation.

Significant adverse impacts are identified for noise, land use, socioeconomics, and ground traffic and transportation with implementation of Alternative 1, Homebasing the F–35C at NAF El Centro. No significant impacts are identified for any resource area with implementation of Alternative 2, Homebasing the F–35C at NAS Lemoore. No mitigation measures were identified during the development of the Draft EIS.

While no basing decision has been made, Alternative 2, Homebasing the F–35C at NAS Lemoore, is the DoN's preferred home basing alternative because it would best meet mission requirements, would have fewer environmental effects, and would cost less.

The DoN F–35C West Coast Homebasing Draft EIS with the Draft CAA General Conformity Determination was distributed to federal, state, and local agencies, elected officials, and other interested individuals and organizations. Copies of the Draft EIS with the Draft CAA General Conformity Determination are available for public review at the following libraries:

1. City of El Centro Public Library, 1140 North Imperial Avenue, El Centro, California 92243.
2. City of Imperial Public Library, 200 West 9th Street, Imperial, California 92251.
3. Imperial County Free Library, Holtville Branch, 101 East 6th Street, Holtville, California 92250.
4. Imperial County Free Library, Heber Branch, 1078 Dogwood Road, Heber, California 92257.
5. Imperial County Free Library, Seeley Library Services provided at the Seeley Community Church, 1774 West Rio Vista Street, Seeley, California 92243.

6. Kings County Library, Lemoore Branch, 457 C Street, Lemoore, California 93245.
7. Kings County Library, Hanford Branch, 401 North Douty Street, Hanford, California 93230.
8. Fresno County Public Library, Central Library, 2420 Mariposa Street, Fresno, California 93721.
9. Fresno County Public Library, Riverdale Branch Library, 20975 Malsbary Avenue, Riverdale, California 93656.
10. West Hills College Lemoore Library, 555 College Avenue, Lemoore, California 93245.

Dated: February 13, 2013.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–04702 Filed 2–27–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Impact Aid Discretionary Construction Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information

Impact Aid Discretionary Construction Grant Program. Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.041C.

Dates:

Applications Available: February 28, 2013.

Deadline for Transmittal of Applications: April 15, 2013.

Deadline for Intergovernmental Review: June 13, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Impact Aid Discretionary Construction Grant program provides grants for emergency repairs and modernization of school facilities to certain local educational agencies (LEAs) that receive Impact Aid formula funds.

Priorities: In this notice, the Secretary is soliciting applications for Priority 1 and Priority 2 emergency repair grants only. We will not accept applications for any other priorities at this time.

In accordance with 34 CFR 75.105(b)(2)(ii)and (iv), these priorities are from section 8007(b)(2)(A) of the Elementary and Secondary Education Act of 1965, as amended (Act) (20 U.S.C. 7707(b)), and the regulations for this program in 34 CFR 222.177–179.

Absolute Priorities: For FY 2013, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities.

These priorities are:

Priority 1—Emergency Repair Grants.

An LEA is eligible to apply for an emergency grant under the first priority of section 8007(b) of the Act if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act (20 U.S.C. 7707(a));

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act (20 U.S.C. 7707(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

Priority 2—Emergency Repair Grants.

An LEA is eligible to apply for an emergency grant under the second priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act;

(b) (1) Enrolls federally connected children living on Indian lands equal to at least 40 percent of the total number of children in average daily attendance (ADA) in its schools; or

(2) Enrolls federally connected children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools;

(c) Has used at least 75 percent of its bond limit;

(d) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(e) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

Additionally, an LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the other criteria described in paragraphs (a) and (b) may apply under Priority 2 on behalf of a school located within its geographic boundaries if—

(a) The school—

(1) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The school has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel;

(c) The LEA has used at least 75 percent of its bond limit; and

(d) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average.

Program Authority: 20 U.S.C. 7707(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for 34 CFR 75.600 through 75.617), 77, 79, 80, 82, 84, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 222.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,138,125.

Estimated Number of Awards: 2. Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2013 and in FY 2014 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $50,000 to $4,138,125.

Estimated Average Size of Awards: $2,069,062.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We will determine each project period based on the nature of the project proposed and the time needed to complete it. We will specify this period in the grant award document.

III. Eligibility Information

1. *Eligible Applicants:*

An LEA may qualify for an emergency grant under Priority 1 or Priority 2. a. Consistent with the requirements of Priority 1, an LEA is eligible to receive an emergency grant under the first priority of section 8007(b) of the Act if it—

(1) Is eligible to receive formula construction funds for the fiscal year

under section 8007(a) of the Act (20 U.S.C. 7707(a)) because it enrolls a high percentage (at least 50 percent) of federally connected children in ADA who either reside on Indian lands or who have a parent on active duty in the U.S. uniformed services.

(2)(i) Has no practical capacity to issue bonds (as defined in 34 CFR 222.176);

(ii) Has minimal capacity to issue bonds (as defined in 34 CFR 222.176) and has used at least 75 percent of its bond limit; or

(iii) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act (20 U.S.C. 7707(b)(2)); and

(3) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

b.(1) Consistent with the requirements of Priority 2, an LEA is eligible to receive an emergency grant under the second priority of section 8007(b) of the Act if it—

(i) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act;

(ii)(A) Enrolls federally connected children living on Indian lands equal to at least 40 percent of the total number of children in ADA in its schools; or

(B) Enrolls federally connected children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools;

(iii) Has used at least 75 percent of its bond limit;

(iv) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(v) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(2) Additionally, an LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the criteria above may apply under Priority 2 on behalf of a school located within its geographic boundaries if—

(i) The school—

(A) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(B) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(ii) The school has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel;

(iii) The LEA has used at least 75 percent of its bond limit; and

(iv) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average.

2. a. *Cost Sharing or Matching:* In reviewing proposed awards, the Secretary considers the funds available to the grantee from other sources, including local, State, and other Federal funds. See 20 U.S.C. 7707(b)(5)(A)(iii) and 34 CFR 222.174 and 222.191 through 222.193. Consistent with 34 CFR 222.192, an applicant will be required to submit the applicant's most recently available audited financial reports for three consecutive fiscal years, showing closing balances for all school funds. If significant balances (as detailed in 34 CFR 222.192) are available at the close of the applicant's FY 2012, or its most recently audited year, that are not obligated for other purposes, those funds will be considered available for the proposed emergency repair project. Available balances may reduce the amount of funds that may be awarded or eliminate the applicant's eligibility for an emergency grant award under this competition.

b. *Supplement-Not-Supplant:* As outlined in 34 CFR 222.174, this competition involves supplement-not-supplant funding requirements. Grant funds under this competition may not be used to supplant or replace other available non-Federal construction money.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an electronic application via the Internet at: *www.G5.gov*. For assistance, please contact Nyonu Wi Akamefula, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C121, Washington, DC 20202–6244. Telephone: (202) 260–2410, Fax: 1–866–799–1273, or by email: *Nyonuwi.Akamefula@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: February 28, 2013.

Deadline for Transmittal of Applications: April 15, 2013.

Applications for grants under this competition must be submitted electronically using G5, the Department's grant management system, accessible through the Department's G5 site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider any application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: June 13, 2013.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Except for applicants with no practical capacity to issue bonds, as defined in 34 CFR 222.176, an eligible applicant's award amount may not be more than 50 percent of the total cost of an approved project and the total amount of grant funds may not exceed $4 million during any four-year period. See 34 CFR 222.193. For example, an LEA that is awarded $4 million in the first year may not receive any additional funds for the following three years. Applicants may submit only one application for one educational facility as provided by 34 CFR 222.183. If an applicant submits more than one application, the Department will consider only the first submission, as determined by the G5 e-application system. Grant recipients must, in accordance with Federal, State, and local laws, use emergency grants for

permissible construction activities at public elementary and secondary school facilities. The scope of the project for a selected facility will be identified as part of the final grant award conditions. A grantee must also ensure that its construction expenditures under this program meet the requirements of 34 CFR 222.172 (allowable program activities) and 34 CFR 222.173 (prohibited activities).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Impact Aid Discretionary Construction Grant Program—CFDA 84.041C, must be submitted electronically using the G5 system, accessible through the Department's G5 site at *www.G5.gov*.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not email an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by midnight, Washington, DC time, on the application deadline date. G5 will not accept an application for this competition after 11:59:59 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Discretionary Construction Program under Section 8007(b) and all necessary signature pages.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- By the application deadline date, you must fax or email a signed copy of the cover page and the independent emergency certification form for the Application for Discretionary Construction Program under Section 8007(b) to the Impact Aid Program after following these steps:

(1) Print a copy of the application from G5 for your records.

(2) The applicant's Authorizing Representative must sign and date the cover page. The local certifying official must sign the certification for an emergency application. These forms must be submitted by the application deadline in order to be considered for funding under this program.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the Application for Discretionary Construction Program under Section 8007(b).

(4) Fax or email the signed cover page and independent emergency certification for the Discretionary Construction Program under Section 8007(b) to the Impact Aid Program at 1–866–799–1273 or by email to *Impact.Aid@ed.gov.* These forms must be submitted before midnight, Washington, DC time, of the application deadline in order to be considered for funding under this program.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of G5 System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the G5 system is unavailable, we will grant you an extension until midnight, Washington, DC time, the following business day to enable you to transmit your application electronically, by mail,

or by hand delivery. We will grant this extension if—

(1) You are a registered user of the G5 system and you have initiated an electronic application for this competition; and

(2)(a) G5 is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 11:00 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 11:00 p.m. and midnight, Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the G5 help desk at 1–888–336–8930. If G5 is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application. Extensions referred to in this section apply only to the unavailability of the G5 system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the G5 system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to G5; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Nyonu Wi Akamefula, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., room 3C121, Washington, DC 20202–6244. Phone: 202–260–2410. FAX: 1–866–799–1273.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Impact Aid Program, Attention: (CFDA Number 84.041C), Room 3C121, 400 Maryland Avenue SW., Washington, DC 20202–6244.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Impact Aid Program, Attention: (CFDA Number 84.041C), Room 3C121, 400 Maryland Avenue SW., Washington, DC 20202–6244.

The Impact Aid Program accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope—if not provided by the Department—the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Impact Aid Program will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Impact Aid Program at (202) 260–3858.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are based on 20 U.S.C. 7707(b)(4) and (b)(6), as further clarified in 34 CFR 222.183 and 222.187 and are described in the following paragraphs. The Secretary gives distinct weight to the listed selection criteria. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally, unless otherwise specified. The maximum score that an application may receive is 100 points.

(1) Need for project/severity of the school facility problem to be addressed by the proposed project (30 points).

(a) Justification that the proposed project will address a valid emergency, and consistency of the emergency description and the proposed project with the certifying local official's statement (15 points).

(b) Impact of the emergency condition on the health and safety of the building occupants or on program delivery. Applicants should describe: The systems or areas of the facility involved, (e.g., HVAC, roof, floor, windows; the type of space affected, such as instructional, resource, food service, recreational, general support, or other areas); the percentage of building occupants affected by the emergency; and the importance of the facility or affected area to the instructional program (15 points).

(2) Project urgency (28 points).

(a) Risk to occupants if the facility condition is not addressed. Applicants should describe: Projected increased future costs; the anticipated effect of the proposed project on the useful life of the facility or the need for major construction; and the age and condition of the facility and date of last renovation of affected areas.

(b) The justification for rebuilding, if proposed.

(3) Effects of Federal presence (30 points total).

(a) Amount of non-taxable Federal property in the applicant LEA

(percentage of Federal property divided by 10) (10 points).

(b) The number of federally connected children identified in section 8003(a)(1)(A), (B), (C), and (D) of the Act in the LEA (percentage of identified children in LEA divided by 10) (10 points).

(c) The number of federally connected children identified in section 8003(a)(1)(A), (B), (C), and (D) of the Act in the school facility (percentage of identified children in school facility divided by 10) (10 points).

(4) Ability to respond or pay (12 points total).

(a) The percentage of its bonding capacity used by the LEA. Four points will be distributed based on this percentage so that an LEA that has used 100 percent of its bonding capacity receives all four points, and an LEA that has used less than 25 percent of its bond limit receives only one point. LEAs that do not have limits on bonded indebtedness established by their States will be evaluated by assuming that their bond limit is 10 percent of the assessed value of real property in the LEA. LEAs deemed to have no practical capacity to issue bonds will receive all four points (4 points).

(b) Assessed value of real property per student (applicant LEA's total assessed valuation of real property per pupil as a percentile ranking of all LEAs in the State). Points will be distributed by providing all four points to LEAs in the State's poorest quartile and only one point to LEAs in the State's wealthiest quartile (4 points).

(c) Total tax rate for capital or school purposes (applicant LEA's tax rate for capital or school purposes as a percentile ranking of all LEAs in the State). If the State authorizes a tax rate for capital expenditures, then these data must be used; otherwise, data on the total tax rate for school purposes are used. Points will be distributed by providing all four points to LEAs in the State's highest-taxing quartile and only one point to LEAs in the State's lowest-taxing quartile (4 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Upon receipt, Impact Aid program staff will screen all applications to eliminate any applications that do not meet the eligibility standards, are incomplete, or are late. Applications that do not include a signed cover page and a signed independent emergency certification submitted by fax or email before midnight, Washington, DC time on the application deadline are considered incomplete and will not be considered for funding. Program staff will also calculate the scores for each application under criteria (3) and (4). Panel reviewers will assess the applications under criteria (1) and (2).

(a) Applications are ranked based on the total number of points received during the review process. Those with the highest scores will be at the top of the funding slate.

(b) Applicants may submit only one application for one educational facility. If an applicant submits multiple applications, the Department will only consider the first sequentially submitted application, as provided under 34 CFR 222.183.

(c) For applicants that request funding for new construction and that are selected for funding, the Department will require a feasibility of construction study prior to making an award determination. This independent third-party study must demonstrate that the area upon which the construction will occur is suitable for construction and will be able to sustain the new facility or addition. This study should include information to show that the soil is stable, the site is suitable for construction, and the existing infrastructure can serve and sustain the new facility.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Department has established the following performance measure for this program: An increasing percentage of LEAs receiving Impact Aid Construction funds will report that the overall condition of their school buildings is adequate. Data for this measure will be reported to the Department on Table 10 of the application for Impact Aid Section 8003 Basic Support Payments.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Nyonu Wi Akamefula, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., room 3C121, Washington, DC 20202–6244. Telephone: (202) 260–2410 or by email: *Impact.Aid@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at 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.

Dated: February 25, 2013.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2013–04692 Filed 2–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications, Reports, and Other Records for the 2012–2013 Award Year

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Overview Information: Applications, Reports, and Other Records for the 2012–2013 Award Year; Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, William D. Ford Federal Direct Loan, Teacher Education Assistance for College and Higher Education (TEACH) Grant, and Iraq and Afghanistan Service Grant Programs.

Catalog Federal Domestic Assistance (CFDA) Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Programs; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program; 84.408 Iraq and Afghanistan Service Grant Program.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended, for the 2012–2013 award year. The Federal student aid programs include the Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, Federal Pell Grant, William D. Ford Federal Direct Loan (Direct Loan), Teacher Education Assistance for College and Higher Education (TEACH) Grant, and Iraq and Afghanistan Service Grant Programs.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

Deadline and Submission Dates: See Tables A, B, and C at the end of this notice.

Table A—Deadline Dates for Application Processing and Receipt of Institutional Student Information Records (ISIRs) or Student Aid Reports (SARs) by Institutions for the 2012–2013 Award Year

Table A provides information and deadline dates for application processing, including deadlines for receipt of the Free Application for Federal Student Aid (FAFSA); corrections to and signatures for the FAFSA, ISIRs, and SARs; and verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System is June 30, 2013, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), correction, notice of change of address or school, or request for a duplicate SAR is September 21, 2013. Verification documents must be received by the institution no later than the earlier of 120 days after the student's last date of enrollment for the 2012–2013 award year or September 28, 2013. As a reminder, verification is not required for unsubsidized Direct Stafford Loans and PLUS Loans, TEACH Grants, and Iraq and Afghanistan Service Grants.

For all Federal student aid programs, an ISIR or SAR must be received by the institution no later than the earlier of the student's last date of enrollment for the 2012–2013 award year or September 28, 2013. For all Federal student aid programs, except for Direct PLUS Loans made to parent borrowers, an ISIR or SAR with an official expected family contribution must be received by the institution no later than the earlier of the student's last date of enrollment for the 2012–2013 award year or September 28, 2013. For the Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs and for Direct Subsidized Loans, for a student not meeting the conditions for a late disbursement, a valid ISIR or SAR must be received no later than the earlier of the student's last date of enrollment for the 2012–2013 award year or September 28, 2013. For a student meeting the conditions for a late disbursement under these programs or loans, a valid ISIR or SAR must be received by the deadlines provided in Table A.

In accordance with 34 CFR 668.164(g)(4)(i), an institution may not make a late disbursement of title IV student assistance funds later than 180 days after the date of the institution's determination that the student withdrew, as provided in 34 CFR 668.22, or, for a student who did not withdraw, 180 days after the date the student otherwise became ineligible. Table A provides that, to make a late disbursement of title IV student assistance funds, an institution must receive a valid ISIR or valid SAR no later than 180 days after its determination of a student's withdrawal or, for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, but not later than September 28, 2013.

Table B—Federal Pell Grant Program and Iraq and Afghanistan Service Grant Program Submission Dates for Disbursement Information by Institutions for the 2012–2013 Award Year

Table B provides the earliest submission and deadline dates for institutions to submit Federal Pell Grant and Iraq and Afghanistan Service Grant disbursement records to the Department's Common Origination and Disbursement (COD) System and deadline dates for an institution's request for administrative relief if it cannot meet the established deadline for specified reasons.

For disbursements (or adjustments to previously made disbursements) made prior to April 1, 2013, an institution must submit Federal Pell Grant or Iraq and Afghanistan Service Grant disbursement records, as applicable, no later than 30 days after making the disbursement or becoming aware of the

need to adjust a student's previously reported Federal Pell Grant or Iraq and Afghanistan Service Grant disbursement.

For disbursements (or adjustments to previously made disbursements) made on or after April 1, 2013, an institution must submit Federal Pell Grant or Iraq and Afghanistan Service Grant disbursement records, as applicable, no later than 15 days after making the disbursement or becoming aware of the need to adjust a student's previously reported Federal Pell Grant or Iraq and Afghanistan Service Grant disbursement. In accordance with the regulations in 34 CFR 668.164, we consider that Federal Pell Grant and Iraq and Afghanistan Service Grant funds are disbursed on the date that the institution: (a) credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Federal Pell Grant and Iraq and Afghanistan Service Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department.

An institution's failure to submit disbursement records within the required timeframe may result in the Secretary rejecting all or part of the reported disbursement. In addition, such failure may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure, in accordance with subpart G of part 668.

Table C—William D. Ford Federal Direct Loan (Direct Loan) Program and Teacher Education Assistance for College and Higher Education (TEACH) Grant Program Submission Dates for Disbursement Information by Institutions for the 2012–2013 COD Processing Year

Table C provides the earliest submission and deadline dates for institutions to submit Direct Loan and TEACH Grant disbursement records to the Department's COD System.

For disbursements (or adjustments to previously made disbursements) made prior to April 1, 2013, an institution must submit Direct Loan or TEACH Grant disbursement records no later than 30 days after making a Direct Loan or TEACH Grant disbursement, or becoming aware of the need to adjust a student's previously reported Direct Loan or TEACH Grant disbursement.

For disbursements (or adjustments to previously made disbursements) made on or after April 1, 2013, an institution must submit Direct Loan or TEACH Grant disbursement records no later than 15 days after making a Direct Loan or TEACH Grant disbursement or becoming aware of the need to adjust a student's previously reported Direct Loan or TEACH Grant disbursement. In accordance with 34 CFR 668.164, we consider that Direct Loan and TEACH Grant funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Direct Loan and TEACH Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department. An institution's failure to submit disbursement records within the required timeframe may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

Other Sources for Detailed Information

We publish a detailed discussion of the Federal student aid application process in the 2012–2013 Federal Student Aid Handbook and in the 2012–2013 ISIR Guide.

Additional information on the institutional reporting requirements for the Federal Pell Grant Program, Iraq and Afghanistan Service Grant Program, Direct Loan Program, and TEACH Grant Program is contained in the 2012–2013 *COD Technical Reference*.

You may access these publications by selecting the ''iLibrary'' link at the Information for Financial Aid Professionals Web site at: *www.ifap.ed.gov*.

Applicable Regulations: The following regulations apply:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Pell Grant Program, 34 CFR part 690.

(3) William D. Ford Direct Loan Program, 34 CFR part 685.

(4) Teacher Education Assistance for College and Higher Education Grant Program, 34 CFR 686.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Union Center Plaza, room 114I1, Washington, DC 20202–5345. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

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 program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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.

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070g, 1070h, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: February 25, 2013.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

TABLE A—DEADLINE DATES FOR APPLICATION PROCESSING AND RECEIPT OF INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS) OR STUDENT AID REPORTS (SARS) BY INSTITUTIONS FOR THE 2012–2013 AWARD YEAR

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Free Application for Federal Student Aid (FAFSA)—''FAFSA on the Web'' (original or renewal).	Electronically to the Department's Central Processing System (CPS).	June 30, 2013.[1]

TABLE A—DEADLINE DATES FOR APPLICATION PROCESSING AND RECEIPT OF INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS) OR STUDENT AID REPORTS (SARS) BY INSTITUTIONS FOR THE 2012–2013 AWARD YEAR—Continued

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
	Signature page (if required)	To the address printed on the signature page.	September 21, 2013.
Student through an Institution	An electronic FAFSA (original or renewal).	Electronically to the Department's CPS.	June 30, 2013.[1]
Student	A paper original FAFSA	To the address printed on the FAFSA or envelope provided with the form.	June 30, 2013.
Student	Electronic corrections to the FAFSA using "Corrections on the Web".	Electronically to the Department's CPS.	September 21, 2013.[1]
	Signature page (if required)	To the address printed on the signature page.	September 21, 2013.
Student through an Institution	Electronic corrections to the FAFSA.	Electronically to the Department's CPS.	September 21, 2013.[1]
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and email addresses and change of institutions.	To the address printed on the SAR.	September 21, 2013.
Student	Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 21, 2013.
Student	SAR with an official expected family contribution (EFC) calculated by the Department's CPS (except for Parent PLUS).	To the institution	The earlier of: —The student's last date of enrollment; or —September 28, 2013.[2]
Student through CPS	ISIR with an official EFC calculated by the Department's CPS (except for Parent PLUS).	To the institution from the Department's CPS.	The earlier of: —The student's last date of enrollment; or —September 28, 2013.[2]
Student Student through CPS	Valid SAR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans). Valid ISIR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans)	To the institution To the institution from the Department's CPS	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(g), the earlier of: —The student's last date of enrollment; or —September 28, 2013.[2]
Student Student through CPS	Valid SAR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans). Valid ISIR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans)	To the institution To the institution from the Department's CPS	For a student receiving a late disbursement under 34 CFR 668.164(g)(4)(i), the earlier of: —180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or —September 28, 2013.[2]
Student	Verification documents	To the institution	The earlier of:[3] —120 days after the student's last date of enrollment; or —September 28, 2013.[2]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for a Federal Pell Grant and applicants selected for verification, the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs and the Federal Direct Loan Program, but no later than this deadline date.

TABLE B—FEDERAL PELL GRANT PROGRAM AND IRAQ AND AFGHANISTAN SERVICE GRANT PROGRAM SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2012–2013 AWARD YEAR

Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
Institutions	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient and Iraq and Afghanistan Service Grant recipient at the institution.	For the Federal Pell Grant Program only to the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG). For both the Federal Pell Grant Program and the Iraq and Afghanistan Service Grant Program, to the COD System using the COD Web site at: www.cod.ed.gov.	Earliest Disbursement Date: January 12, 2012. Earliest Submission Dates: An institution may submit anticipated disbursement information as early as March 10, 2012. An institution may submit actual disbursement information as early as April 16, 2012, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method; (b) 7 calendar days prior to the disbursement date under the Cash Monitoring #1 payment method; or (c) The date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods. Deadline Submission Dates:[1] No later than the earlier of September 30, 2013 or: (a) For disbursements that occur prior to April 1, 2013 an institution is required to submit disbursement information no later than 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data. (b) For disbursements that occur on or after April 1, 2013 an institution is required to submit disbursement information no later than 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data. Notes: Disbursements made between January 1, 2012 and April 16, 2012 must be reported not later than 30 calendar days after April 16, 2012. Downward adjustments after September 30, 2013 of a previously reported and accepted award or disbursement may be submitted at any time until September 30, 2018. Other disbursement information for submission after September 30, 2013 may be submitted only upon approval of a request for an extension, as specified below.

TABLE B—FEDERAL PELL GRANT PROGRAM AND IRAQ AND AFGHANISTAN SERVICE GRANT PROGRAM SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2012–2013 AWARD YEAR—Continued

Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
Institutions	Requests for extensions to the established disbursement submission deadlines may be made for reasons, including, but not limited to: (a) A program review or initial audit finding per 34 CFR 690.83; (b) A late disbursement under 34 CFR 668.164(g); or (c) Disbursements previously blocked as a result of another institution failing to post a downward adjustment.	Via COD Web site at: *www.cod.ed.gov.*	The earlier of: —When the institution is fully reconciled and is ready to submit all additional data for the program and the award year; or —September 30, 2018.
Institutions	Request for administrative relief based on a natural disaster or other unusual circumstance or an administrative error made by the Department.	Via COD Web site at: *www.cod.ed.gov.*	The earlier of: —A date designated by the Secretary after consultation with the institution; or —February 1, 2014.
Institutions	Request for administrative relief if a student reenters the institution within 180 days after initially withdrawing and the institution is reporting a disbursement for the student within 15 days of the student's reenrollment but after September 30, 2013.[2]	Via COD Web site at: *www.cod.ed.gov.*	The earlier of: —15 days after the student reenrolls; or —May 3, 2014.

[1] Transmissions must be completed and accepted before 12:00 (Eastern Time) midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[2] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

Note: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

TABLE C—WILLIAM D. FORD FEDERAL DIRECT LOAN (DIRECT LOAN) PROGRAM AND TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2012–2013 COD PROCESSING YEAR [1]

Who submits?	What is submitted?	Where is it submitted?	What are the earliest submission and deadline dates for receipt?
Institutions	At least one acceptable disbursement record must be submitted for each Direct Loan and TEACH Grant recipient at the institution.	To the Student Aid Internet Gateway (SAIG) or to the Common Origination and Disbursement (COD) System using the COD Web site at: *www.cod.ed.gov.*	Earliest Disbursement Date: January 1, 2012. Earliest Submission Dates: An institution may submit anticipated disbursement information as early as March 10, 2012. An institution may submit actual disbursement information as early as March 10, 2012, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method; (b) 7 calendar days prior to the disbursement date under the Cash Monitoring #1 payment method; or (c) The date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods. Deadline Submission Dates:[2]

TABLE C—WILLIAM D. FORD FEDERAL DIRECT LOAN (DIRECT LOAN) PROGRAM AND TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2012–2013 COD PROCESSING YEAR [1]—Continued

Who submits?	What is submitted?	Where is it submitted?	What are the earliest submission and deadline dates for receipt?
			For disbursements that occur prior to April 1, 2013 an institution is required to submit disbursement information no later than 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or For disbursements that occur on or after April 1, 2013 an institution is required to submit disbursement information no later than 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data. Note: Disbursements made between January 1, 2012 and March 10, 2012 must be reported not later than 30 calendar days after March 10, 2012.

[1] A COD Processing Year is a period of time in which institutions are permitted to submit Direct Loan and TEACH Grant records to the COD System that are related to a given award year. For a Direct Loan, the period of time includes loans that have a loan period covering any day in the 2012–2013 award year. For a TEACH Grant, the period of time includes an award for a payment period that includes any day in the 2012–2013 award year.

[2] Transmissions must be completed and accepted before 12:00 (Eastern Time) midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

Note: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2013–04689 Filed 2–27–13; 8:45 am]

BILLING CODE 4000–01–P]

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and Request for Office of Management and Budget (OMB) Review and Comment.

SUMMARY: EIA has submitted, under the provisions of the Paperwork Reduction Act of 1995, an information collection request to the OMB for a three-year extension, with changes, of its Oil and Gas Reserves System Surveys (OGRS) forms (OMB 1905–0057):

- Form EIA–23L, *Annual Survey of Domestic Oil and Gas Reserves, Field Level Report*
- Form EIA–23S, *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report*
- Form EIA–64A, *Annual Report of the Origin of Natural Gas Liquids Production*

EIA proposes to suspend the Form EIA–23S and collect similar data in a revised sample for the Form EIA–23L data collection. The sampling method for the Form EIA–23L survey frame will be changed to a cut-off sample, and procedures to estimate data will be adjusted, accordingly. EIA proposes to report reserves for three, small natural gas and oil production states (IL, IN, and TN) ''as reported'' (i.e., will no longer estimate the total reserves for these states) under the Miscellaneous States category in EIA publications. The Form EIA–23L instructions will be updated with the current EIA definitions of terms used. Form EIA–64A will be extended without changes.

DATES: Comments regarding this collection must be received on or before April 1, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718 or contacted by email at *chad_s_whiteman@omb.eop.gov.*

ADDRESSES: Written comments should be sent to the: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503; and to Steven Grape, EI–24, U.S. Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

instrument and instructions should be directed to Steven Grape, EI–24, U.S. Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, fax: (202) 586–4420, email: *steven.grape@eia.gov*. The collection instrument and instructions are also available on the Internet, at: *http://www.eia.gov/survey/form/eia_23l/proposed/instructions.pdf http://www.eia.gov/survey/form/eia_23l/proposed/form.pdf http://www.eia.gov/survey/form/eia_64a/proposed/instructions.pdf http://www.eia.gov/survey/form/eia_64a/proposed/form.pdf.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0057;

(2) *Information Collection Request Title:* Oil and Gas Reserves System;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* EIA has a congressional mandate to provide accurate annual estimates of U.S. proved crude oil, natural gas, and natural gas liquids reserves. EIA presents annual reserves data in EIA Web reports to meet this requirement. This collected data and EIA's nationwide estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data are used directly in EIA web reports concerning U.S. crude oil, natural gas, and natural gas liquids reserves, and are incorporated into other reports, including EIA's *Annual Energy Review, Annual Energy Outlook, Short-Term Energy Outlook, Petroleum Supply Annual,* and *Natural Gas Annual.*

EIA proposes to suspend the Form EIA–23S, consolidate some if its respondents into the Form EIA–23L, and change the Form EIA–23L sampling and estimation to streamline administrative processes and to improve data quality. The Form EIA–23L sampling method will change from a probability proportional to size (PPS) method to a cut-off sample that excludes the smallest respondents, who may lack the resources to effectively report all requested data, thus reducing the potential for non-sampling error. Procedures to estimate data published at regional summary levels will be adjusted to reflect the new sampling method. The Form EIA–23L questions will not change. The Form EIA–23L instructions will be updated with the current EIA definitions of terms used. The Form EIA–64A is proposed to be extended without changes.

(5) *Annual Estimated Number of Respondents:* 1,450;

(6) *Annual Estimated Number of Total Responses:* 1,450;

(7) *Annual Estimated Number of Burden Hours:* 43,650 hours;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0; EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b) and Section 657 of the Department of Energy Organization Act, Pub. L. 95–91.

Issued in Washington, DC, on February 22, 2013.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2013–04714 Filed 2–27–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–75–000]

Southwest Gas Storage Company; Prior Notice of Activity Under Blanket Certificate

On February 8, 2013, Southwest Gas Storage Company (Southwest) filed a prior notice request pursuant to sections 157.205, 157.208(b), 157.213(b) and 157.216(b)(2) of the Commission's regulations under the Natural Gas Act and Southwest's blanket certificate issued in Docket No. CP99–230–000. Southwest seeks authorization to construct, modify and abandon certain natural gas storage facilities at the Howell Storage Field, located in Livingston County, Michigan, to improve the storage field's operation.

Questions regarding this application may be directed to Stephen Veatch, Senior Director of Certificates & Tariffs, Southwest Gas Storage Company, 5051 Westheimer Road, Houston, Texas 77056, or by calling 713 989–2024, by faxing 713 989–1176, or by emailing *stephen.veatch@sug.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such motions or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 22, 2013.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04662 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–12–000]

Commission Information Collection Activities (FERC–577); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–577, Natural Gas Facilities: Environmental Review and Compliance (formerly Gas Pipeline Certificates: Environmental Impact Statement). The FERC is proposing to change the title of the report to more accurately reflect the nature of the information being collected.

DATES: Comments on the collection of information are due April 29, 2013.

ADDRESSES: You may submit comments (identified by Docket No. IC13–12–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Natural Gas Facilities: Environmental Review and Compliance.

OMB Control No.: 1902–0128.

Type of Request: Three-year extension of the FERC–577 information collection requirements with no changes to the current reporting requirements.

Abstract: Section 102(2)(c) of the of the National Environmental Policy Act of 1969 (NEPA) [1] requires that all Federal agencies must include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement on: the environmental impact on the proposed actions; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man's environment and the maintenance and enhancement of long term productivity; and any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

The Commission's regulations implementing NEPA in 18 CFR part 380 require applicants seeking authorization for the construction and abandonment of facilities to provide a detailed environmental report with their application that describes the impact the project is likely to have and the measures the applicant will implement to mitigate those impacts. This environmental report normally consists of at least twelve separate reports, each addressing a particular resource area.

Type of Respondents: The respondents include all jurisdictional natural gas companies seeking authorization from the Commission to construct or abandon facilities.

Estimate of Annual Burden: [2] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–577—NATURAL GAS FACILITIES: ENVIRONMENTAL REVIEW AND COMPLIANCE

Type of respondent	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Natural Gas Companies	92	16	1,472	193	284,096

The total estimated annual cost burden to respondents is $19,886,720 [284,096 hours * $70/hour [3] = $19,886,720].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04655 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

[1] Public Law 91–190.

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] Average salary (per hour) plus benefits per full-time equivalent employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–74–000]

Sierrita Gas Pipeline LLC; Notice of Application

Take notice that on February 8, 2013, Sierrita Gas Pipeline LLC (Sierrita), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced docket an application pursuant to section 3 of the Natural Gas Act (NGA) requesting a Presidential Permit and authorization to construct new border crossing pipeline facilities and export of natural gas at the International

Boundary between the United States and Mexico in Pima County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Concurrent with this filing, Sierrita filed an application under section 7(c) and Parts 157 and 284 of the NGA in Docket No. CP13–73–000, requesting authorization to construct and operate a new 59 mile, 36-inch interstate natural gas pipeline located between Tucson and Sasabe, Arizona. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Mr. Francisco Tarin, Director, Regulatory Affairs, Sierrita Gas Pipeline LLC, P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 667–7517, by facsimile at (719) 667–7534, or by email at *SierritaRegAffairs@kindermorgan.com* or Ms. Sheila Tweed, Deputy General Counsel or David K. Dewey, Associate Counsel, Sierrita Gas Pipeline LLC, P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 520–4227, by facsimile at (719) 520–4415, or by email at *SierritaLegalFERC@kindermorgan.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 15, 2013.

Dated: February 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04666 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–73–000]

Sierrita Gas Pipeline LLC; Notice OF Application

Take notice that on February 7, 2013, Sierrita Gas Pipeline LLC (Sierrita), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations, requesting authorization to construct and operate a new 59 mile, 36-inch interstate natural gas pipeline located between Tucson and Sasabe, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The project, referred to as the ''Sierrita Pipeline Project'' will be capable of delivering approximately 200 MMcf/day and is located entirely in Pima County, Arizona. Concurrent with this filing, Sierrita filed an application under section 3 of the NGA in Docket No. CP13–74–000, requesting a Presidential Permit and authorization to construct new border crossing pipeline facilities and export of natural gas at the International Boundary between the United States and Mexico in Pima County, Arizona. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact *FERC at FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Mr. Francisco Tarin, Director, Regulatory Affairs, Sierrita Gas Pipeline LLC, P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 667–7517, by facsimile at (719) 667–7534, or by email at *SierritaRegAffairs@kindermorgan.com*

or Ms. Sheila Tweed, Deputy General Counsel or David K. Dewey, Associate Counsel, Sierrita Gas Pipeline LLC, P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 520–4227, by facsimile at (719) 520–4415, or by email at *SierritaLegalFERC@kindermorgan.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 15, 2013.

Dated: February 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04665 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2079–069]

Middle Fork American River Project; Notice of Availability of the Final Environmental Impact Statement for the Middle Fork American River Hydrolectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the application for license for the Middle Fork American River Hydroelectric Project (FERC No. 2079), located on the Middle Fork of the American and Rubicon Rivers and Duncan and North and South Fork Long Canyon Creeks in Placer and El Dorado Counties, California, and has prepared a final environmental impact statement (EIS) for the project. The project occupies 3,268 acres of federal lands administered by the U.S. Department of Agriculture—Forest Service.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Middle Fork American River Hydroelectric Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, please contact Matt Buhyoff at (202) 502–6824 or at *matt.buhyoff@ferc.gov.*

Dated: February 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04664 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9821–102]

Trafalgar Power Inc.; Notice of Teleconference To Discuss Agency Requests To Reopen License To Require Fish Passage and Protection Measures

a. *Date and Time of teleconference:* March 12, 2013 at 10:00 a.m. Eastern Time.

b. *FERC Contact:* B. Peter Yarrington (202) 502–6129 or *peter.yarrington@ferc.gov.*

c. *Purpose of teleconference:* Discuss issues concerning agency requests for

use of reserved authority under standard article 15 of the Ogdensburg Project license to require improvements in fish passage and protection measures at the project. The project is located on the Oswegatchie River in St. Lawrence County, New York. In letters filed November 27 and November 30, 2012, respectively, the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation requested the Commission exercise its reserved authority.

d. *Proposed topics of discussion:* (1) Background and current status of fish passage and protection on the Oswegatchie River, on which the Ogdensburg Project is located; (2) the resource agencies' rationale for recommending fish passage and protection facilities at the project; (3) identification of possible improvements to fish passage and protection at the project; (4) the cost and feasibility of any improvements and effects on project economics; (5) the licensee's bankruptcy status and issues concerning the ongoing bankruptcy proceeding, and (6) any other pertinent issues.

e. All local, state, and federal agencies, Indian tribes, and other interested entities are invited to participate by phone. If interested in participating, please contact B. Peter Yarrington at the above email address for information on the telephone number and access code for the conference call.

f. FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202)-502–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Dated: February 20, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04658 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–35–000]

National Fuel Gas Distribution Corporation; Notice of Petition for Rate Approval

Take notice that on February 12, 2013, National Fuel Gas Distribution Corporation filed for approval of rates for transportation service pursuant to 284.123(b)(2) of the Commissions regulations, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, February 27, 2013.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04653 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–36–000]

Energy Transfer Fuel, LP; Notice of Petition for Rate Approval

Take notice that on February 15, 2013, Energy Transfer Fuel, LP filed for approval of rates for transportation service pursuant to 284.123(b)(2) of the Commissions regulations and to make minor administrative modification to its Statement of Operating Conditions, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, February 27, 2013.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04667 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–34–000]

The East Ohio Gas Company; Notice of Petition for Rate Approval

Take notice that on February 11, 2013, The East Ohio Gas Company (East Ohio) filed a Rate Election pursuant to 284.123(b)(1) of the Commissions regulations proposing to utilize its currently effective volumetric rates for transportation services on file with the Public Utilities Commission of Ohio as well as an alternative of a new reservation-based rate derived from those rates. East Ohio also proposes to begin offering firm transportation service and revise its Operating Statement to include terms and conditions applicable to the new firm service, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, February 27, 2013.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04661 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR13–32–000; PR13–33–000]

Cobra Pipeline Ltd.; Notice of Petition

Take notice that on February 4, 2013, Cobra Pipeline Ltd. (Cobra) filed in Docket No. PR13–32–000 to correct a Tariff Record filed on November 19, 2012 in Docket No. PR13–11–000 and in Docket No. PR13–33–000 to withdraw a Tariff Record filed on October 18, 2012, in Docket No. PR13–11–000, as more fully detailed in the petitions.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, February 27, 2013.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04660 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–18–001]

Kansas Gas Service, a Division of ONEOK, Inc.; Notice of Petition

Take notice that on February 6, 2013, Kansas Gas Service, a division of ONEOK, Inc. filed to correct a Tariff Record filed on December 14, 2012, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the

Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, February 27, 2013.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04659 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–76–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

Take notice that on February 11, 2013, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, P.O. Box 20010, Owensboro, Kentucky 42304–0010, filed in Docket No. CP13–76–000, a prior notice request pursuant to sections 157.203, 157.205, 157.208, and 157.213 of the Commission's regulations under the Natural Gas Act (NGA), seeking authorization to install a storage gas recovery system at its Alden Storage Field in Rice County, Kansas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, Southern Star proposes to construct a new compressor site gas and storage gas recovery laterals in order to reclaim storage gas that has migrated vertically and to prevent further migration. The gas recovery laterals will be installed pursuant to the automatic provisions of Southern Star's blanket certificate authorized in Docket No. CP82–479. The estimated cost of the proposed facilities is $3,522,000.

Any questions regarding the applications should be directed to David N. Roberts, Staff Analyst, Regulatory Compliance, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301 or call 270–852–4654.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04663 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–79–000]

Equitrans, L.P. Notice of Request Under Blanket Authorization

Take notice that on February 12, 2013, Equitrans, L.P. (Equitrans), pursuant to the blanket certificate authorization granted in Docket No. CP96–532–000,[1] filed an application in accordance to sections 157.205, 157.208(c), and 157(210) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct, own, operate, and maintain its Low Pressure East Upgrade Project (Project) in Allegheny, Washington, and Greene Counties, Pennsylvania. Equitrans proposes to replace and pressure test certain portions of its H–129, H–128, and H–111 pipelines and to retest the H–101 pipeline. The replacement and retest of pipelines will result in an increase in Maximum Allowable Operating Pressure (MAOP). The proposed Project will allow for more flexibility for Equitrans' customers to better serve Pittsburgh and surrounding markets, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans proposes to replace approximately 4.91 miles of pipe and to pressure test 10.10 miles of existing pipeline to better maintain system integrity and operational reliability. In addition, launchers and receivers will be installed on the facilities, which will make the line capable of in-line inspections for integrity purposes with out disruption to customer service. Also, Equitrans proposes to upgrade interconnects, meter taps, and appurtenant facilities along its system in Allegheny, Washington, and Greene Counties, Pennsylvania. As a result of the proposed Project, the MAOP of the Project will increase from about 216 psig to 655 psig, except for a small portion of the H–111 line which will be increased to an MAOP of 546 psig. Increasing the MAOP will position Equitrans to be able to receive gas in the future from high-pressure production wells located in the Marcellus Shale Play. Equitrans anticipates that work on all pipeline replacement and retest activities will be performed within previously disturbed areas used during the original installation of the pipeline facilities. A 75-foot temporary construction right-of-way that includes the existing right-of-way will be used during construction of the Project. Equitrans estimates that the cost of the Project will be approximately $29,407,261. The projected in-service date of the Project is November 1, 2013.

Any questions concerning this application may be directed to Paul W. Diehl, Senior Counsel—Midstream EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222, (412) 395–5540, or email at *PDiehl@eqt.com.*

[1] *Equitrans, L.P.,* 85 FERC ¶ 61,089 (1998).

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04654 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7783–000]

Piedmont Triad Regional Water Authority; Notice of Termination of Exemption by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of exemption by implied surrender.

b. *Project No.:* 7783–000.

c. *Date Initiated:* February 21, 2013.

d. *Exemptee:* Piedmont Triad Regional Water Authority.

e. *Name and Location of Project:* The Cedar Falls Hydroelectric Project is located on the Deep River in Randolph County, North Carolina.

f. *Filed Pursuant to:* 18 CFR 4.106.

g. *Exemptee Contact Information:* Greg Flory, P.O. Box 1326, Randleman, North Carolina, 27317.

h. *FERC Contact:* Krista Sakallaris (202)502–6302 or *Krista.Sakallaris@ferc.gov.*

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance of this notice by the Commission. Please file your submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp* and filing instructions in the Commission's Regulations at 18 CFR section 385.2001(a)(1)(iii).[1] To assist you with eFilings you should refer to the submission guidelines document at *http://www.ferc.gov/help/submission-guide/user-guide.pdf.* In addition, certain filing requirements have statutory or regulatory formatting and other instructions. You should refer to a list of these ''qualified documents'' at *http://www.ferc.gov/docs-filing/efiling/filing.pdf.* You must include your name and contact information at the end of your comments. Please include the project number (P–7783–000) on any documents or motions filed. The Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of its submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE., Washington, DC 20426.

j. *Description of Existing Facilities:* The inoperative project consists of the following existing facilities: (1) An existing reservoir behind an upstream dam of two existing dams in the project, with a surface area of 2.5 acres and a storage capacity of 9.0 acre-feet; (2) a 125-foot-long, 6-foot-high concrete slab and buttress, upstream dam; (3) a 80-foot-long, 9-foot-high dam 300 feet downstream from the upstream dam and located on the left side of an island that splits Deep River into two streams; (4) the use of 70-feet of an existing 15-foot-wide, 200-foot-long intake canal; (5)a penstock off the right side of the intake canal;(6) a powerhouse with two turbine/generator units operating at a hydraulic head of 16-feet for a total installed capacity of 275 kW; (7)a 50-foot-long transmission line; (8) and appurtenant facilities.

k. *Description of Proceeding:* The exemptee is in violation of Standard Article 1 of its exemption, which was granted on September 6, 1984 (28 FERC ¶ 62,338). The Commission's regulation, 18 CFR 4.106, provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. During a May 2006 dam safety inspection, Commission staff found that the project stopped operating sometime after 2003.

Commission staff inspected the project again in March 2009 and in August 2012. The exemptee did not provide a project representative during either of these inspections. The Commission attempted to contact the exemptee, requiring a plan and schedule to resume operation; the exemptee did not respond.

In November 2012, and again in January 2013, the Commission sent letters requiring the exemptee to file a plan and schedule to restore project operation or an application to surrender the project. The letter stated that the Commission would begin an implied surrender process if the plan was not filed. To date, the exemptee has not filed a response and the project remains inoperable.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–7783–000) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the

[1] *http://www.ferc.gov/legal/fed-sta.asp* Select the link for Code of Federal Regulations and navigate to § 385.2001.

Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. *Filing and Service of Responsive Documents*—Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE,'' as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of exemption. A copy of any protest or motion to intervene must be served upon each representative of the Exemptee specified in item g above. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04656 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8233–001]

L.E. Bell Construction Company, Inc.; Notice of Termination of Exemption by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of exemption by implied surrender.

b. *Project No.:* 8233–001.

c. *Date Initiated:* February 21, 2013.

d. *Exemptee:* L.E. Bell Construction Company, Inc.

e. *Name and Location of Project:* The Tallapoosa River Hydroelectric Project is located on the Tallapoosa River in Cleburne County, Alabama.

f. *Filed Pursuant to:* 18 CFR 4.106.

g. *Exemptee Contact Information:* Mr. Larry E. Bell and Ms. Lynne B. Pyle, L.E. Bell Construction Company, Inc., 1226 County Road 11, Heflin, AL, 36264.

h. *FERC Contact:* Krista Sakallaris (202)502–6302 or *Krista.Sakallaris@ferc.gov.*

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance of this notice by the Commission. Please file your submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp* and filing instructions in the Commission's Regulations at 18 CFR section 385.2001(a)(1)(iii).[1] To assist you with eFilings you should refer to the submission guidelines document at *http://www.ferc.gov/help/submission-guide/user-guide.pdf.* In addition, certain filing requirements have statutory or regulatory formatting and other instructions. You should refer to a list of these ''qualified documents'' at *http://www.ferc.gov/docs-filing/efiling/filing.pdf.* You must include your name and contact information at the end of your comments. Please include the project number (P–8233–001) on any documents or motions filed. The Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of its submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE., Washington, DC 20426.

j. *Description of Existing Facilities:* The inoperative project consists of the following existing facilities: (1) A 16-foot-high, 100-foot-long concrete dam; (2) a reservoir with negligible storage capacity at elevation 819 feet m.s.l.; (3) a powerhouse at the base of the dam containing three generating units with a total rated capacity of 400 kW; and (4) a 300-foot-long transmission line tying into the existing Alabama Power Company's system.

k. *Description of Proceeding:* The exemptee is in violation of Standard Article 1 of its exemption, which was granted on May 13, 1985 (31 FERC ¶ 62,201). The Commission's regulation, 18 CFR 4.106, provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. The project has not operated since 1996 and the reservoir has been drained.

In November 2010 and in May of 2013 the Commission sent the exemptee letters providing details for filing a surrender application and requiring the exemptee to file information regarding their intentions to restore operation to the project. In January 2013, the Commission sent a letter requiring the exemptee to show cause why the Commission should not initial proceedings to terminate the exemption for failure to resume generation at the project. The exemptee has not responded to any of the Commissions correspondence, nor have they filed a surrender application.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–8233–001) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

[1] *http://www.ferc.gov/legal/fed-sta.asp* Select the link for Code of Federal Regulations and navigate to § 385.2001.

requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. *Filing and Service of Responsive Documents*—Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE,'' as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of exemption. A copy of any protest or motion to intervene must be served upon each representative of the Exemptee specified in item g above. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: February 21, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–04657 Filed 2–27–13; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–0015]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP086677XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP086677XX.

Purpose and Use:

Brief description of the purpose of the transaction:

A direct loan to a Hong Kong-based company to support the procurement of two U.S. manufactured satellites as well as U.S. launch services and launch insurance.

Brief non-proprietary description of the anticipated use of the items being exported:

The loan will enable the Hong Kong based company to finance the construction and launch of two U.S. manufactured satellites. The satellites are expected to provide additional capacity to broadcasting and telecommunications companies in the company's existing customer base in North East Asia, MENA, South Asia, Australia and ASEAN as well as potential growth in other markets such as India and Australasia.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier(s):

- Space Systems/Loral Inc.
- Space Exploration Technologies Corporation.

Obligor: Asia Satellite Telecommunications Company Limited.

Guarantor(s): N/A.

Description of Items Being Exported: To finance the construction and launch of two U.S. manufactured satellites and related ground facility equipment, data and services, U.S. launch services and launch insurance.

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before March 25, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *www.regulations.gov.* To submit a comment, enter EIB–2013–0015 the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0015 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–04572 Filed 2–27–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and

clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 29, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Earth Stations Aboard Aircraft (ESAA).

Form Number: Not applicable.

Type of Review: New information collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 6 respondents and 54 responses.

Estimated Time per Response: 1–4 hours.

Frequency of Response: On occasion reporting requirement; Third-party disclosure requirement.

Total Annual Burden: 114 hours.

Total Annual Costs: $16,200.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under Sections 4(i), 4(j), 7(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), and 303(y) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), and 303(y).

Privacy Assessment: No impact(s).

Needs and Uses: The Federal Communications Commission (''Commission'') is seeking approval from the Office of Management and Budget (OMB) in order to establish a new information collection titled, ''Earth Stations Aboard Aircraft.''

On December 28, 2012, the Commission released a Notice of Proposed Rulemaking and Report and Order titled, ''Revisions to Parts 2 and 25 of the Commission's Rules to Govern the Use of Earth Stations Aboard Aircraft Communicating with Fixed-Satellite Service Geostationary-Orbit Space Stations Operating in the 10.95–11.2 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz and 14.0–14.5 GHz Frequency Bands and Service Rules and Procedures to Govern the Use of Aeronautical Mobile Satellite Service Earth Stations in Frequency Bands Allocated to the Fixed Satellite Service,'' IB Docket Nos. 12–376 and 05–20, FCC 12–161 (''ESAA Report and Order'').

The Notice of Proposed Rulemaking portion of the rulemaking does not contain any new or modified information collection requirements. The new information collection requirements contained in the Report and Order are as follows:

47 CFR 25.132(b)(3)—Applicants seeking authority to use an antenna that does not meet the standards set forth in §§ 25.209(a) and (b), pursuant to the procedure set forth in § 25.220, § 25.221, § 25.222, § 25.223, § 25.226 or § 25.227 of this part, are required to submit a copy of the manufacturer's range test plots of the antenna gain patterns specified in paragraph (b)(1) of this section.

47 CFR 25.227(b)—Applications for ESAA operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the Fixed-Satellite Service shall include, in addition to the particulars of operation identified on Form 312, and associated Schedule B, the applicable technical demonstrations in paragraphs (b)(1), (b)(2) or (b)(3) and the documentation identified in paragraphs (b)(4) through (b)(8) of this section.

(1) An ESAA applicant proposing to implement a transmitter under paragraph (a)(1) of this section shall demonstrate that the transmitter meets the off-axis EIRP spectral-density limits contained in paragraph (a)(1)(i) of this section. To provide this demonstration, the application shall include the tables described in paragraph (b)(1)(i) of this section or the certification described in paragraph (b)(1)(ii) of this section. The ESAA applicant also shall provide the value N described in paragraph (a)(1)(i)(A) of this section. An ESAA applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section shall provide the certifications identified in paragraph (b)(1)(iii) of this section. An ESAA applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section shall provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

(i) Any ESAA applicant filing an application pursuant to paragraph (a)(1) of this section shall file three tables and/or graphs depicting off-axis EIRP density masks defined by 25.227(a) and measured off-axis EIRP density levels of the proposed earth station antenna in the direction of the plane of the GSO; the co-polarized EIRP density in the elevation plane, that is, the plane perpendicular to the plane of the GSO; and cross-polarized EIRP density. Each table shall provide the EIRP density level at increments of 0.1° for angles between 0° and 10° off-axis, and at increments of 5° for angles between 10° and 180° off-axis.

(A) For purposes of the off-axis EIRP density table in the plane of the GSO, the off-axis angle is the angle in degrees from the line connecting the focal point of the antenna to the orbital location of the target satellite, and the plane of the GSO is determined by the focal point of the antenna and the line tangent to the arc of the GSO at the orbital position of the target satellite.

(B) For purposes of the off-axis co-polarized EIRP density table in the elevation plane, the off-axis angle is the angle in degrees from the line connecting the focal point of the antenna to the orbital location of the target satellite, and the elevation plane is defined as the plane perpendicular to the plane of the GSO defined in paragraph (b)(1)(i)(A) of this section.

(C) For purposes of the cross-polarized EIRP density table, the off-axis angle is the angle in degrees from the line connecting the focal point of the antenna to the orbital location of the target satellite and the plane of the GSO as defined in paragraph (b)(1)(i)(A) of this section will be used.

(ii) An ESAA applicant shall include a certification, in Schedule B, that the ESAA antenna conforms to the gain pattern criteria of § 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off-axis EIRP spectral density envelope set forth in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section will be met

under the assumption that the antenna is pointed at the target satellite.

(iii) An ESAA applicant proposing to implement a transmitter under paragraphs (a)(1)(ii)(A) of this section shall:

(A) Demonstrate that the total tracking error budget of their antenna is within 0.2° or less between the orbital location of the target satellite and the axis of the main lobe of the ESAA antenna. As part of the engineering analysis, the ESAA applicant must show that the antenna pointing error is within three sigma (б) from the mean value; and

(B) Demonstrate that the antenna tracking system is capable of ceasing emissions within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the ESAA antenna exceeds 0.5°.

(iv) An ESAA applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section shall:

(A) Declare, in its application, a maximum antenna pointing error and demonstrate that the maximum antenna pointing error can be achieved without exceeding the off-axis EIRP spectral-density limits in paragraph (a)(1)(i) of this section; and

(B) Demonstrate that the ESAA transmitter can detect if the transmitter exceeds the declared maximum antenna pointing error and can cease transmission within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the ESAA antenna exceeds the declared maximum antenna pointing error, and will not resume transmissions until the angle between the orbital location of the target satellite and the axis of the main lobe of the ESAA antenna is less than or equal to the declared maximum antenna pointing error.

(2) An ESAA applicant proposing to implement a transmitter under paragraph (a)(2) of this section and using off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) of this section shall provide the following certifications and demonstration as exhibits to its earth station application:

(i) A statement from the target satellite operator certifying that the proposed operation of the ESAA has the potential to receive harmful interference from adjacent satellite networks that may be unacceptable.

(ii) A statement from the target satellite operator certifying that the power density levels that the ESAA applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s).

(iii) A statement from the target satellite operator certifying that it will include the power-density levels of the ESAA applicant in all future coordination agreements.

(iv) A demonstration from the ESAA operator that the ESAA system will comply with all coordination agreements reached by the satellite operator and is capable of detecting and automatically ceasing emissions within 100 milliseconds when the transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator.

(3) An ESAA applicant proposing to implement an ESAA system under paragraph (a)(3) of this section and using variable power-density control of individual simultaneously transmitting co-frequency ESAA earth stations in the same satellite receiving beam shall provide the following certifications and demonstration as exhibits to its earth station application:

(i) The applicant shall make a detailed showing of the measures it intends to employ to maintain the effective aggregate EIRP density from all simultaneously transmitting co-frequency terminals operating with the same satellite transponder at least 1 dB below the off-axis EIRP density limits defined in paragraphs (a)(1)(i)(A)–(C) of this section. In this context the term ''effective'' means that the resultant co-polarized and cross-polarized EIRP density experienced by any GSO or non-GSO satellite shall not exceed that produced by a single ESAA transmitter operating at 1 dB below the limits defined in paragraphs (a)(1)(i)(A)–(C) of this section. The applicant also must demonstrate that an individual transmitter and the entire ESAA system is capable of automatically ceasing emissions within 100 milliseconds if the aggregate off-axis EIRP-densities exceed the off-axis EIRP density limits minus 1 dB, as set forth in paragraph (a)(3)(i) of this section. The International Bureau will place this showing on public notice along with the application.

(ii) An applicant proposing to implement an ESAA system under paragraph (a)(3)(ii) of this section that uses off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(3)(i) of this section shall provide the following certifications, demonstration and list of satellites as exhibits to its earth station application:

(A) A detailed showing of the measures the applicant intends to employ to maintain the effective aggregate EIRP density from all simultaneously transmitting co-frequency terminals operating with the same satellite transponder at the EIRP density limits supplied to the target satellite operator. The International Bureau will place this showing on Public Notice along with the application.

(B) A statement from the target satellite operator certifying that the proposed operation of the ESAA has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable.

(C) A statement from the target satellite operator certifying that the aggregate power-density levels that the ESAA applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s).

(D) A statement from the target satellite operator certifying that it will include the aggregate power-density levels of the ESAA applicant in all future coordination agreements.

(E) A demonstration from the ESAA operator that the ESAA system is capable of detecting and automatically ceasing emissions within 100 milliseconds when an individual transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator and that the overall system is capable of shutting off an individual transmitter or the entire system if the aggregate off-axis EIRP spectral-densities exceed those supplied to the target satellite operator.

(F) An identification of the specific satellite or satellites with which the ESAA system will operate.

(4) There shall be an exhibit included with the application describing the geographic area(s) in which the ESAA will operate.

(5) Any ESAA applicant filing for an ESAA terminal or system and planning to use a contention protocol shall include in its application a certification that will comply with the requirements of paragraph (a)(4) of this section.

(6) The point of contact referred to in paragraph (a)(5) of this section shall be included in the application.

(7) Any ESAA applicant filing for an ESAA terminal or system shall include in its application a certification that will comply with the requirements of paragraph (a)(6), (a)(9), (a)(10), (a)(11) of this section.

(8) All ESAA applicants shall submit a radio frequency hazard analysis determining via calculation, simulation, or field measurement whether ESAA terminals, or classes of terminals, will

produce power densities that will exceed the Commission's radio frequency exposure criteria. ESAA applicants with ESAA terminals that will exceed the guidelines in Section 1.1310 for radio frequency radiation exposure shall provide, with their environmental assessment, a plan for mitigation of radiation exposure to the extent required to meet those guidelines. All ESAA licensees shall ensure installation of ESAA terminals on aircraft by qualified installers who have an understanding of the antenna's radiation environment and the measures best suited to maximize protection of the general public and persons operating the vehicle and equipment. An ESAA terminal exhibiting radiation exposure levels exceeding 1.0 mW/cm^2 in accessible areas, such as at the exterior surface of the radome, shall have a label attached to the surface of the terminal warning about the radiation hazard and shall include thereon a diagram showing the regions around the terminal where the radiation levels could exceed 1.0 mW/cm^2.

47 CFR 25.227(c)(1)—Operations of ESAAs in the 14.0–14.2 GHz (Earth-to-space) frequency band in the radio line-of-sight of the NASA TDRSS facilities on Guam (latitude 13°36′55″ N, longitude 144°51′22″ E) or White Sands, New Mexico (latitude 32°20′59″ N, longitude 106°36′31″ W and latitude 32°32′40″ N, longitude 106°36′48″ W) are subject to coordination with the National Aeronautics and Space Administration (NASA) through the National Telecommunications and Information Administration (NTIA) Interdepartment Radio Advisory Committee (IRAC). Licensees shall notify the International Bureau once they have completed coordination. Upon receipt of such notification from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations.

47 CFR 25.227(c)(2)—When NTIA seeks to provide similar protection to future TDRSS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's International Bureau that the site is nearing operational status. Upon public notice from the International Bureau, all Ku-band ESAA licensees shall cease operations in the 14.0–14.2 GHz band within radio line-of-sight of the new TDRSS site until the licensees complete coordination with NTIA/IRAC for the new TDRSS facility. Licensees shall notify the International Bureau once they have completed coordination for the new TDRSS site. Upon receipt of such notification from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. The ESAA licensee then will be permitted to commence operations in the 14.0–14.2 GHz band within radio line-of-sight of the new TDRSS site, subject to any operational constraints developed in the coordination process.

47 CFR 25.227(d)(1)—Operations of ESAA in the 14.47–14.5 GHz (Earth-to-space) frequency band in the radio line-of-sight of radio astronomy service (RAS) observatories observing in the 14.47–14.5 GHz band are subject to coordination with the National Science Foundation (NSF). The appropriate NSF contact point to initiate coordination is Electromagnetic Spectrum Manager, NSF, 4201 Wilson Blvd., Suite 1045, Arlington, VA 22203, fax 703–292–9034, *email esm@nsf.gov*. Licensees shall notify the International Bureau once they have completed coordination. Upon receipt of the coordination agreement from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations.

47 CFR 25.227(d)(2)—A list of applicable RAS sites and their locations can be found in 25.226(d)(2) Table 1.

47 CFR 25.227(d)(3)—When NTIA seeks to provide similar protection to future RAS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's International Bureau that the site is nearing operational status. Upon public notice from the International Bureau, all Ku-band ESAA licensees shall cease operations in the 14.47–14.5 GHz band within the relevant geographic zone of the new RAS site until the licensees complete coordination for the new RAS facility. Licensees shall notify the International Bureau once they have completed coordination for the new RAS site and shall submit the coordination agreement to the Commission. Upon receipt of such notification from a licensee, the International Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. The ESAA licensee then will be permitted to commence operations in the 14.47–14.5 GHz band within the relevant coordination distance around the new RAS site, subject to any operational constraints developed in the coordination process.

If various data in this collection were not filed in conjunction with our rules, then applicants and licensees would not obtain the authorization necessary to provide telecommunications services; the Commission would not be able to carry out its mandate as required by statute; and applicants and licensees would not be able to effectively provide services to the public.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–04706 Filed 2–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 13–184]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Denisa Babcock from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud, and abuse.

DATES: Debarment commences on the date Ms. Denisa Babcock receives the debarment letter or April 1, 2013, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418–1697 or by email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Theresa.Cavanaugh@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debarred Ms. Denisa Babcock from the schools and libraries service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 13–184, which was mailed to Ms. Babcock and released on February 8, 2013. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information

Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via email *http://www.bcpiweb.com.*

Federal Communications Commission.

Theresa Z. Cavanaugh,

Chief, Investigations and Hearings Division, Enforcement Bureau.

February 8, 2013

DA 13–184

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL

Ms. Denisa Babcock
c/o Leon Fred Spies
Mellon & Spies
312 E. College Street, Suite 216
Iowa City, IA 52240

Re: Notice of Debarment

FCC File No. EB–12–IH–1396

Dear Ms. Babcock:

The Federal Communications Commission (Commission) hereby notifies you that, pursuant to Section 54.8 of its rules, you are prohibited from participating in activities associated with or relating to the schools and libraries universal service support mechanism (E-Rate program) for three years from either the date of your receipt of this Notice of Debarment, or of its publication in the **Federal Register**, whichever is earlier in time (Debarment Date).[1]

On October 10, 2012, the Commission's Enforcement Bureau (Bureau) sent you a Notice of Suspension and Initiation of Debarment Proceeding (Notice of Suspension)[2] that was published in the **Federal Register** on November 9, 2012.[3] The Notice of Suspension suspended you from participating in activities associated with or relating to the E-Rate program. It also described the basis for initiating debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.

As discussed in the Notice of Suspension, on May 11, 2011, you pled guilty to converting more than $1,000,000 from various school districts for your personal use from November 2005 through December 2009.[4] That amount included approximately $49,000 in E-Rate checks payable to the school districts you represented through your E-Rate consulting company, Camanche Consulting Services (CCS).[5] Pursuant to Section 54.8(c) of the Commission's rules, your conviction of criminal conduct in connection with the E-Rate program is the basis for this debarment.[6]

In accordance with the Commission's debarment rules, you were required to file with the Commission any opposition to your suspension or its scope, or to your proposed debarment or its scope, no later than 30 calendar days from either the date of your receipt of the Notice of Suspension or of its publication in the **Federal Register**, whichever date occurred first.[7] The Commission did not receive any such opposition from you.

For the foregoing reasons, you are debarred from participating in activities associated with or related to the E-Rate program for three years from the Debarment Date.[8] During this debarment period, you are excluded from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.[9]

Sincerely,

Theresa Z. Cavanaugh,

Chief, Investigations and Hearings Division Enforcement Bureau

cc: Johnnay Schrieber, Universal Service Administrative Company (via email)
Rashann Duvall, Universal Service Administrative Company (via email)
Maureen McGuire, United States Attorney's Office, Southern District of Iowa (via email)
Richard Westphal, United States Attorney's Office, Southern District of Iowa (via email)

[FR Doc. 2013–04712 Filed 2–27–13; 8:45 am]

BILLING CODE 6712–01–P

[1] 47 CFR 54.8(g); *see also* 47 CFR 0.111 (delegating authority to the Enforcement Bureau to resolve universal service suspension and debarment proceedings).

[2] Letter from Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Denisa Babcock, Notice of Suspension and Initiation of Debarment Proceeding, 27 FCC Rcd 12311 (Enf. Bur. 2012) (Attachment 1) (*Suspension Notice*).

[3] 77 FR 67363 (Nov. 9, 2012).

[4] *Suspension Notice,* 27 FCC Rcd at 12312.

[5] *Id.*

[6] 47 CFR 54.8(c).

[7] 47 CFR 54.8(e)(3), (4). Any opposition had to be filed no later than November 9, 2012.

[8] *Id.* §§ 54.8(e)(5), (g).

[9] *Id.* §§ 54.8(a)(1), (5), (d).

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: DAIJ MEDIA, LLC, Station KJOZ, Facility ID 20625, BP–20120731AAA, From CONROE, TX, To BAYTOWN, TX; GREAT SOUTH WIRELESS, LLC, Station WZZN, Facility ID 5885, BPH–20130207ABP, From UNION GROVE, AL, To TRIANA, AL; REED BROADCASTING, LLC, Station WRAB, Facility ID 2552, BP–20130207ABK, From ARAB, AL, To UNION GROVE, AL; SOUTHERN STONE BROADCASTING, INC., Station WMGZ, Facility ID41993, BPH–20070416ACW, From EATONTON, GA, To LEXINGTON, GA.

DATES: The agency must receive comments on or before April 29, 2013.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2013–04717 Filed 2–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Availability of the Federal Communications Commission's FY 2012 Service Contract Inventory

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission is publishing this notice to advise the public of the availability of the FY 2012 Service Contract Inventory as required by Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117). This inventory provides information on FY 2012 service contract actions over $25,000.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Ms. Dawn DiGiorgio, Administrative Operations, Office of the Managing Director, at (202) 418–0314 or *Dawn.DiGiorgio@fcc.gov.*

SUPPLEMENTARY INFORMATION: The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 and December 19, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/omb/procurement-service-contract-inventories.*

The Federal Communications Commission has posted (1) Its FY 2012 inventory and (2) a summary of the FY 2012 inventory, as well as, (3) the planned analysis of its selected special interest function from the FY 2012 Service contract inventory, and (4) the analysis of the FY 2011 Service Contract inventory, on the Federal Communications Commission's Web site at the following link *http://www.fcc.gov/encyclopedia/service-contract-inventory.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–04697 Filed 2–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets to Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has determined that insufficient assets exist in the receivership of Franklin Bank, S.S.B., Houston, Texas, to make any distribution on general unsecured claims, and therefore such claims will recover nothing and have no value.

DATES: The FDIC made its determination on February 22, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (972) 761–8677. Written correspondence may also be mailed to FDIC as Receiver of Franklin Bank, S.S.B., Attention: Claims Agent, 1601 Bryan Street, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION: On November 7, 2008, Franklin Bank, S.S.B., Houston, Texas, (FIN #10021) was closed by the Texas Department of Savings and Mortgage Lending, and the Federal Deposit Insurance Corporation (''FDIC'') was appointed as its receiver (''Receiver''). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund (see 12 U.S.C. 1823(c)(4)), the FDIC facilitated a transaction with Prosperity Bank, El Campo, Texas, to assume all deposits and a portion of the assets of the failed institution.

Section 11(d)(11)(A) of the FDI Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of December 31, 2012, the maximum value of assets that could be available for distribution by the Receiver, together with maximum possible recoveries on professional liability claims against directors, officers, and other professionals, plus anticipated maximum recoveries from pending transactions was $714,420,467. As of the same date, administrative expenses and depositor liabilities equaled $1,031,660,492, exceeding available assets and potential recoveries by $317,240,025. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

Dated: February 22, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–04553 Filed 2–27–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2013–N–02]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection known as ''Affordable Housing Program (AHP),'' which has been assigned control number 2590–0007 by the Office of Management and Budget (OMB). FHFA will submit a request to OMB for regular review and approval to renew the information collection for a three-year period. The control number is due to expire on February 28, 2013.

DATES: Interested persons may submit comments on or before April 1, 2013.

Comments: Submit written comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, *Fax:* (202) 395–6974, *Email address: OIRA_Submission @omb.eop.gov.* Please also submit them to FHFA using any of the following methods:

- *Email: RegComments@fhfa.gov.* Please include Proposed Collection; Comment Request: Affordable Housing Program (AHP) (No. 2013–N–02) in the subject line of the message.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: Affordable Housing Program (AHP) (No. 2013–N–02).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at *Regcomments@fhfa.gov* to ensure timely receipt by the agency.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Principal Advisor/Manager, Office of the Deputy Director, Division of Bank Regulation (DBR), *Sylvia.Martinez@fhfa.gov*, (202) 649–3301; or Deattra D. Perkins, Senior Policy Analyst, DBR, *Deattra.Perkins @fhfa.gov*, (202) 649–3133 (not toll-free numbers). The telephone number for the

telecommunications device for the hearing impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish an affordable housing program, the purpose of which is to enable a Bank's members to finance homeownership by households with incomes at or below 80% of the area median income (low- or moderate-income households), and to finance the purchase, construction, or rehabilitation of rental projects in which at least 20% of the units will be occupied by and affordable for households earning 50% or less of the area median income (very low-income households).[1] The Bank Act requires each Bank to contribute 10% of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 12 Banks of $100 million.[2]

The AHP regulation requires each Bank to establish a competitive application program under which each Bank accepts applications from its members for AHP subsidized advances or direct subsidies (grants).[3] The Bank evaluates the applications pursuant to AHP regulatory eligibility requirements and AHP regulatory and Bank scoring guidelines, and awards funds to the highest scoring applications. In addition, the AHP regulation authorizes a Bank, in its discretion, to set aside a portion of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low- or moderate-income households.[4] Under the homeownership set-aside programs, a Bank may provide AHP direct subsidies to members to pay for down payment assistance, closing costs, and counseling costs in connection with a household's purchase of its primary residence, and for rehabilitation assistance in connection with a household's rehabilitation of an owner-occupied residence.[5] Currently, a Bank may allocate up to the greater of $4.5 million or 35% of its annual required AHP contribution to homeownership set-aside programs in that year.

B. Need for and Use of the Information Collection

The Banks use AHP data collection to determine whether an AHP applicant satisfies the statutory and regulatory requirements to receive AHP subsidies. FHFA's use of the information is necessary to verify that Bank funding decisions, and the use of the funds awarded, are consistent with statutory and regulatory requirements. The AHP information collection requirements are found in FHFA's Data Reporting Manual (DRM).[6]

The OMB number for the information collection is 2590–0007. The OMB clearance for the information collection expires on February 28, 2013. The likely respondents are institutions that are Bank members and non-member entities that receive or apply for AHP subsidies or grants through a Bank member.

C. Burden Estimate

FHFA analyzed the cost and hour burden for the six facets of the AHP information collection: AHP competitive applications; verifications of statutory and regulatory compliance of AHP competitive applications at the time of subsidy disbursement; AHP modification requests; AHP monitoring agreements; AHP recapture agreements; and homeownership set-aside program applications. As explained in more detail below, the estimate for the total annual hour burden for applicant and member respondents for all seven facets of the AHP information collection is 60,140 hours.

1. AHP Competitive Applications

FHFA estimates a total annual average of 1,500 competitive applications for AHP funding, with 1 response per applicant, and a 24 hour average processing time for each application. The estimate for the total annual hour burden for AHP competitive applications is 36,000 hours (1,500 applicants × 1 application × 24 hours).

2. Verification of Statutory and Regulatory Compliance of AHP Competitive Applications at Time of AHP Subsidy Disbursement

FHFA estimates a total annual average of 600 submissions by members/applicants that the Banks review to verify compliance with statutory and regulatory requirements at the time of AHP subsidy disbursement, with a 1 hour average preparation time for each submission. The estimate for the total annual hour burden for preparation of compliance submissions is 600 hours (600 subsidy disbursements × 1 submission per disbursement × 1 hour).

3. AHP Modification Requests

FHFA estimates a total annual average of 180 modification requests, with 1 response per requestor, and a 2.5 hour average processing time for each request. The estimate for the total annual hour burden for AHP modification requests is 450 hours (180 requestors × 1 request × 2.5 hours).

4. AHP Monitoring Agreements

FHFA estimates a total annual average of 600 AHP monitoring agreements, with 1 agreement per respondent. The estimate for the average hours to implement each AHP monitoring agreement and prepare and review required reports and certifications is 7.75 hours. The estimate for the total annual hour burden for AHP monitoring agreements is 4,650 hours (600 respondents × 1 agreement × 7.75 hours).

5. AHP Recapture Agreements

FHFA estimates a total annual average of 360 AHP recapture agreements, with 1 agreement per respondent. The estimate for the average hours to prepare and implement an AHP recapture agreement is 4 hours. The estimate for the total annual hour burden for AHP recapture agreements is 1,440 hours (360 respondents × 1 agreement × 4 hours).

6. Homeownership Set-Aside Program Applications

FHFA estimates a total annual average of 8,500 homeownership set-aside program applications, with 1 application per respondent, and a 2 hour average processing time for each application. The estimate for the total annual hour burden for homeownership set-aside program applications is 17,000 hours (8,500 respondents × 1 application × 2 hours).

D. Comment Request

FHFA published a notice requesting comments on renewal of this information collection on December 26, 2012. *See* 78 FR 76037. No comments were received. This notice requests written comments on: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on Bank members and AHP applicants and recipients, including through the use of automated collection techniques or

[1] *See* 12 U.S.C. 1430(j)(1) and (2).

[2] *See* 12 U.S.C. 1430(j)(5)(C).

[3] *See* 12 CFR 1291.5.

[4] *See* 12 CFR 1291.6.

[5] *See* 12 CFR 1291.6(c)(4).

[6] *See* Resolution Number 2006–13 (available electronically in the FOIA Reading Room: *http://www.fhfa.gov/Default.aspx?Page=256&ListYear=2006&ListCategory=9#9√2006).*

other forms of information technology. Comments may be submitted in writing as instructed above in the *Comments* section.

Dated: February 25, 2013.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2013–04694 Filed 2–27–13; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 29–30, 2013

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 29–30, 2013.[1]

Consistent with its statutory mandate, the Federal Open Market Committee seeks monetary and financial conditions that will foster maximum employment and price stability. In particular, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to 1/4 percent. The Committee directs the Desk to undertake open market operations as necessary to maintain such conditions. The Desk is directed to continue purchasing longer-term Treasury securities at a pace of about $45 billion per month and to continue purchasing agency mortgage-backed securities at a pace of about $40 billion per month. The Committee also directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The Committee directs the Desk to maintain its policy of rolling over maturing Treasury securities into new issues and its policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in agency mortgage-backed securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, February 22, 2013.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2013–04693 Filed 2–27–13; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on January 29–30, 2013, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

FEDERAL TRADE COMMISSION

[File No. 122 3049]

HTC America, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 22, 2013.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/htcamericaconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''HTC America, File No. 122 3049'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/htcamericaconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Nithan Sannappa (202–326–2674) or Jonathan E. Zimmerman (202–326–2049), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 22, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 22, 2013. Write ''HTC America, File No. 122 3049'' on your comment. Your comment ''including your name and your state'' will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which * * * is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/htcamericaconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''HTC America, File No. 122 3049'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 22, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission?s privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent order applicable to HTC America, Inc. (''HTC'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

HTC is a mobile device manufacturer that develops and manufactures smartphones and tablet computers using Google Inc.'s Android operating system and Microsoft Corporation's Windows Mobile and Windows Phone operating systems. HTC has customized its Android-based mobile devices by adding or modifying various pre-installed applications and components in order to differentiate its products from those of competitors also manufacturing Android-based mobile devices. HTC has also customized both its Android and Windows Mobile devices in order to comply with the requirements of certain network operators. As the customized applications and components are pre-installed on the device, consumers do not choose to install the customized applications and components, and the device user interface does not provide consumers with an option to uninstall or remove the customized applications and components from the device.

The Commission's complaint alleges that HTC engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security in the design and customization of software on its mobile devices. Among other things, HTC:

(1) Failed to implement an adequate program to assess the security of products it shipped to consumers;

(2) Failed to implement adequate privacy and security guidance or training for its engineering staff;

(3) Failed to conduct assessments, audits, reviews, or tests to identify potential security vulnerabilities in its mobile devices;

(4) Failed to follow well-known and commonly-accepted secure programming practices, including secure practices that were expressly described in the operating system's guides for manufacturers and developers, which would have ensured that applications only had access to users' information with their consent;

(5) Failed to implement a process for receiving and addressing security vulnerability reports from third-party researchers, academics or other members of the public, thereby delaying its opportunity to correct discovered vulnerabilities or respond to reported incidents.

The complaint further alleges that, due to these failures, HTC introduced numerous security vulnerabilities in the process of customizing its mobile devices. Once in place, HTC failed to detect and mitigate these vulnerabilities, which, if exploited, provide third-party applications with unauthorized access to sensitive information and sensitive device functionality. The sensitive device functionality potentially exposed by the vulnerabilities includes the ability to send text messages without permission, the ability to record audio with the device's microphone without permission, and the ability to install other applications, including malware, onto the device without the user's knowledge or consent. The complaint alleges that malware placed on consumers' devices without their permission could be used to record and transmit information entered into or stored on the device, including financial account numbers and related access codes or personal identification numbers, and medical information. In addition, other sensitive information exposed by the vulnerabilities includes, but is not limited to, location information, the contents of text messages, the user's personal phone number, phone numbers of contacts, phone numbers of those who send text messages to the user, and the user's web and media viewing history.

The proposed order contains provisions designed to prevent HTC from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits HTC from misrepresenting the extent to which HTC or its products or services—including any covered device—use, maintain and protect the security of covered device functionality or the security, privacy, confidentiality, or integrity of covered information from or about consumers. Part II of the proposed order requires HTC to (1) address security risks related to the development and management of new and existing covered devices, and (2) protect the security, confidentiality, and integrity of covered information, whether collected by respondent or input into, stored on, captured with, accessed or transmitted through a covered device. The security program must contain administrative, technical, and physical safeguards appropriate to HTC's size and complexity, nature and scope of its activities, and the sensitivity of the information collected from or about consumers. Specifically, the proposed order requires HTC to:

- Designate an employee or employees to coordinate and be accountable for the information security program;
- Identify material internal and external risks to the security of covered devices that could result in unauthorized access to or use of covered device functionality, and assess the

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

sufficiency of any safeguards in place to control these risks;

• Identify material internal and external risks to the security, confidentiality, and integrity of covered information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, whether such information is in HTC's possession or is input into, stored on, captured with, accessed or transmitted through a covered device, and assess the sufficiency of any safeguards in place to control these risks;

• Consider risks in each area of relevant operation, including but not limited to (1) employee training and management; (2) product design, development and research; (3) secure software design and testing, including secure engineering and defensive programming; and (4) review, assessment, and response to third-party security vulnerability reports;

• Design and implement reasonable safeguards to control the risks identified through risk assessment, including through reasonable and appropriate software security testing techniques, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures;

• Develop and use reasonable steps to select and retain service providers capable of maintaining security practices consistent with the order, and require service providers by contract to implement and maintain appropriate safeguards; and

• Evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to HTC's operations or business arrangement, or any other circumstances that it knows or has reason to know may have a material impact on its security program.

However, Part II does not require HTC to identify and correct security vulnerabilities in third parties' software on covered devices to the extent the vulnerabilities are not the result of respondent's integration, modification, or customization of the third party software.

Part III of the proposed order requires HTC to develop security patches to fix the security vulnerabilities in each affected covered device having an operating system version released on or after December 2010. Within thirty (30) days of service of the order, HTC must release the security patches either directly to affected covered devices or to the applicable network operator for deployment to the affected covered devices. HTC must provide users of the affected covered devices with clear and prominent notice regarding the availability of the security patches and instructions for installing the security patches.

Part IV of the proposed order requires HTC to obtain, within the first one hundred eighty (180) days after service of the order and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) It has in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security of covered device functionality and the security, confidentiality, and integrity of covered information is protected.

Parts V through IX of the proposed order are reporting and compliance provisions. Part V requires HTC to retain documents relating to its compliance with the order. The order requires that the documents be retained for a three-year period. Part VI requires dissemination of the order now and in the future to all current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. Part VII ensures notification to the FTC of changes in corporate status. Part VIII mandates that HTC submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part IX is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission, Chairman Leibowitz not participating and Commissioner Ohlhausen recused.

Donald S. Clark

Secretary.

[FR Doc. 2013–04606 Filed 2–27–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129; Docket 2012–0076; Sequence 56]

Federal Acquisition Regulation; Submission for OMB Review; Cost Accounting Standards Administration

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning cost accounting standards administration. A notice was published in the **Federal Register** at 77 FR 69441, on November 19, 2012. Two respondents submitted comments.

DATES: Submit comments on or before April 1, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0129, Cost Accounting Standards Administration by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0129, Cost Accounting Standards Administration''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0129, Cost Accounting Standards Administration'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0129, Cost Accounting Standards Administration.

Instructions: Please submit comments only and cite Information Collection 9000–0129, Cost Accounting Standards Administration, in all correspondence

related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–3221 or email a *edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 30.6 and the provision at 52.230–6 include pertinent rules and regulations related to the Cost Accounting Standards (CAS) along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors. Specifically, FAR 52.230–6 requires contractors to submit to the cognizant Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS provision, a general dollar magnitude or detailed cost-impact proposal of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm fixed-price, incentive cost-plus-fixed-fee, etc.) and other contractor business activity.

B. Discussion and Analysis

Two respondents submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Respondent One: Respondent one offered a single comment.

Comment: The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. Provide measures of cost effectiveness within the activity. This may be accomplished by relating performance costs to standard costs or cost estimates by established cost centers and by end-product with development of appropriate analyses of cost variances.

Response: This comment concerned the purpose of the cost accounting principles and not the burden of reporting on the application of these standards.

Respondent Two: Respondent two offered the following comments:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR clause 52.230–6. This clause requires certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors when making changes to their cost accounting practices. Without this information, the Government would be unable to approve changes to contractors cost accounting practices, resulting in the disallowance of contractor charges to contracts. This clause has existed substantially the same since the inception of the FAR.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent questioned the basis for the estimated number of responses per respondent of 2.27. The respondent also stated that the estimate of 175 hours per response per respondent is understated, and that the actual burden is at least 12 times that, but more likely 24 to 48 times this estimate. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the information collection requirement outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and although, the respondent provided estimates of responses and burden hours, the estimates cannot be confirmed with any degree of certainty to totally rely on the information.

Based on consultation with a Government subject matter expert (SME) the estimated burden of 175 hours per response is consider a reasonable average for all submissions associated with the requirements of this collection. The Government SME also confirmed that the 2.27 responses per respondent reflects a reasonable average over the course of a year, as some contractors may not have any cost accounting practice changes while others could have up to four or five.

The estimated annual reporting burden is increased from that published in the **Federal Register** at 75 FR 3236, on January 20, 2010. Based on data from the Federal Procurement Data System for fiscal year 2011, an upward adjustment is made to the estimated annual reporting burden, which reflected an increase in the number of respondents. However, the estimated number of hours per response and the estimated number of responses per respondent remains unchanged based on consultation with the Government SME. At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Number of Respondents: 1,288.
*Responses per Respond*ent: 2.27.
Total Responses: 2,924.

Average Burden Hours per Response: 175.00.

Total Burden Hours: 511,700.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control Number 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: February 21, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–04488 Filed 2–27–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition; Public Availability of the Department of Health and Human Services FY 2011 Service Contract Inventory

AGENCY: Department of Health and Human Services.

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Health and Human Services (HHS) is publishing this notice to advise the public of the availability of its FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 and December 19, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* HHS has posted its inventory and a summary of the inventory on the HHS homepage at the following link: *http://www.hhs.gov/grants/servicecontractsfy11.html.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Lori Sakalos, Director in the HHS/Office of the Secretary, Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Office of Acquisition Policy at 202–690–6361 or *Lori.Sakalos@hhs.gov.*

Dated: February 21, 2013.

Angela Billups,

Associate Deputy Assistant Secretary for Acquisition, Senior Procurement Executive, Assistant Secretary for Financial Resources Office of the Secretary.

[FR Doc. 2013–04719 Filed 2–27–13; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Initial Review

The meeting announced below concerns Monitoring Cause-Specific School Absenteeism for Estimating Community Wide Influenza Transmission, Funding Opportunity Announcement (FOA) CK13–003; and Quantifying Social Contact Rates and Mixing Patterns in the U.S. Population, FOA CK13–004, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11:00 a.m.–5:00 p.m., April 29, 2013 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Monitoring Cause-Specific School Absenteeism for Estimating Community Wide Influenza Transmission, FOA CK13–003; and Quantifying Social Contact Rates and Mixing Patterns in the U.S. Population, FOA CK13–004''.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–04637 Filed 2–27–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Funding Opportunity Announcement, Initial Review

The meeting announced below concerns Indoor Environment of Low-Income Renovated Multifamily Housing in the Western Region of the United States (U01), FOA CE13–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1:00 p.m.–4:00 p.m., April 19, 2013 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Indoor Environment of Low-Income Renovated Multifamily Housing in the Western Region of the United States (U01), FOA CE13–001''.

Contact Person for More Information: J. Felix Rogers, Ph.D., M.P.H., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F63, Atlanta, Georgia 30341, Telephone: (770)488–4334.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–04636 Filed 2–27–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

Notice of Cancellation: A notice was published in the **Federal Register** on February 19, 2013, Volume 78, Number 33, page 11651, announcing a teleconference of the BSC, OID on March 14, 2013. This meeting is canceled due to a scheduling conflict. Notice will be provided when the meeting is rescheduled in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Contact Person for More Information: Robin Moseley, M.A.T., Designated Federal Officer, OID, CDC, 1600 Clifton Road NE., Mailstop D10, Atlanta, Georgia 30333, Telephone: (404) 639–4461.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–04638 Filed 2–27–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–142]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection. *Title of Information Collection:* Examination and Treatment for Emergency Medical Conditions and Women in Labor (EMTALA), 42 CFR 482.12, 488.18, 489.20, and 489.24. *Use:* Pursuant to 42 CFR 488.18, 489.20 and 489.24, during Medicare surveys of hospitals and state agencies CMS will review hospital records for lists of on-call physicians, and will review and obtain the information which must be recorded on hospital medical records for individuals with emergency medical conditions and women in labor, and the emergency department reporting information Medicare participating hospitals and Medicare state survey agencies must pass on to CMS. Additionally, CMS will use the Quality Improvement Organizations Report assessing whether an individual had an emergency condition and whether the individual was stabilized to determine whether to impose a civil monetary penalty or physician exclusion sanctions. Without such information, CMS will be unable to make the hospital emergency services compliance determinations that Congress expects us to make under sections 1154, 1866 and 1867 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. *Form Number:* CMS–R–142 (OCN 0938–0667). *Frequency:* Occasionally. *Affected Public:* Private Sector (business or other for-profit and not-for-profit institutions). *Number of Respondents:* 6.149. *Total Annual Responses:* 6,149. *Total Annual Hours:* 6,149. (For policy questions regarding this collection contact Renate Dombrowski at 410–786–4645. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by April 29, 2013:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 25, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–04673 Filed 2–27–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–64 and CMS–1957]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services. HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Indirect Medical Education (IME) and Supporting Regulations at 42 CFR 412.105; Direct Graduate Medical Education (GME) and Supporting Regulations at 412 CFR 413.75 through 83; *Use:* Section 1886(d)(5)(B) of the Social Security Act (the Act) requires additional payments to be made under the Medicare Prospective Payment System (PPS) for the indirect medical educational costs a hospital incurs in connection with interns and residents (IRs) in approved teaching programs. In addition, Title 42, Part 413, sections 75 through 83 implement section 1886(d) of the Act by establishing the methodology for Medicare payment of the cost of direct graduate medical educational activities. These payments, which are adjustments (add-ons) to other payments made to a hospital under the PPS, are largely determined by the number of full-time equivalent (FTE) IRs that work at a hospital during its cost reporting period. In Federal fiscal year (FY) 2011, the estimated Medicare program payments for indirect medical education (IME) costs amounted to $6.59 billion. Medicare program payments for direct graduate medical education (GME) are also based upon the number of FTE–IRs that work at a hospital. In FY 2011, the estimated Medicare program payments for GME costs amounted to $2.57 billion. *Form Number:* CMS–R–64 (OCN: 0938–0456); *Frequency:* Reporting—Annually; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 1,075; *Total Annual Responses:* 1075; *Total Annual Hours:* 2,150. (For policy questions regarding this collection contact Milton Jacobson at 410–786–7553. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Social Security Office (SSO) Report of State Buy-in Problem; *Use:* Under Section 1843 of the Social Security Act, States may enter into an agreement with the Department of Health and Human Services to enroll eligible individuals in Medicare and pay their premiums. The purpose of the State Buy-in' program is to assure that Medicaid is the payer of last resort by permitting a State to provide Medicare protection to certain groups of needy individuals, as part of the State's total assistance plan. State Buy-in also has the effect of transferring some medical costs for this population from the Medicaid program, which is partially State funded to the Medicare program, which is funded by the federal government and individual premiums. Generally, the States Buy-in for individuals who meet the eligibility requirements for Medicare and are cash recipients or deemed cash recipients or categorically needy under Medicaid. In some cases, States may also include individuals who are not cash assistance recipients under the Medical Assistance Only group. The day-to-day operations of the State Buy-in program is accomplished through an automated data exchange process. The automated data exchange process is used to exchange Medicare and Buy-in entitlement information between the Social Security District Offices, Medicaid State Agencies and the Centers for Medicare & Medicaid Services. When problems arise however that cannot be resolved though the normal data exchange process, clerical actions are required. The CMS–1957, ''SSO Report of State Buy-In Problem'' is used to report Buy-in problems cases. The CMS–1957 is the only standardized form available for communications between the aforementioned agencies for the resolution of beneficiary complaints and inquiries regarding State Buy-in eligibility. *Form Number:* CMS–1957 (OCN: 0938–0035); *Frequency:* Reporting—Annually; *Affected Public:* Individuals and Households; *Number of Respondents:* 3,802; *Total Annual Responses:* 3,802; *Total Annual Hours:* 1,266. (For policy questions regarding this collection contact Lucia Diaz-Robinson at 410–247–6843. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by April 29, 2013:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 22, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–04551 Filed 2–27–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10079 and CMS–10149]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Wage Index Occupational Mix Survey and Supporting Regulations in 42 CFR, Section 412.64; *Use:* Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Social Security Act to require CMS to collect data every 3 years on the occupational mix of employees for each short-term, acute

care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index, for application beginning October 1, 2004 (the FY 2005 wage index). The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. *Form Number:* CMS–10079 (OMB#: 0938–0907); *Frequency:* Reporting—Yearly, Biennially and Occasionally ; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 3,500; *Total Annual Responses:* 3,500; *Total Annual Hours:* 1,680,000. (For policy questions regarding this collection contact Geri Mondowney at 410–786–1172. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Health Insurance Reform: Electronic Security Standards; *Use:* This information collection corresponds to existing regulations establishing standards for the security of electronic protected health information to be implemented by health plans, health care clearinghouses and certain health care providers, as required under Title II, subtitle F, sections 261 through 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191. The use of the security standards improves Federal health programs, private health programs, and the effectiveness and efficiency of the health care industry in general by establishing a level of protection for certain electronic health information. This information collection request does not propose any changes to this information collection related to future modifications of the underlying HIPAA security standards. *Form Number:* CMS–10149 (OCN: 0938–0949); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 135,560; *Total Annual Responses:* 285,560; *Total Annual Hours:* 536,743. (For policy questions regarding this collection contact William Parham at 410–786–4669. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on April 1, 2013. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: February 22, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–04548 Filed 2–27–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Parents and Children Together—Discussion Guide.

OMB No.: 0970–0403.

Description: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing data collection activity as part of the Parents and Children Together (PACT) Evaluation.

The PACT project is a formative evaluation whose overall objective is to document and provide initial assessment of selected Responsible Fatherhood and Healthy Marriage grant programs that were authorized under the 2010 Claims Resolution Act. This information will be critical to informing decisions related to future investments in this kind of programming as well as the design and operation of such services.

To meet the objective of the study, PACT is utilizing three major, interrelated evaluation strategies:

(a) Impact evaluation;

(b) Implementation evaluation; and

(c) Qualitative evaluation.

To collect data for these strategies, four instruments have been approved to-date, and 14 new instruments are proposed through this ICR:

(1) Selecting Study Grantees (discussions with program and partner organization staff)—APPROVED April 20, 2012

(2) Introductory Script (for RE program staff to discuss with program applicants)—APPROVED October 31, 2012

(3) Baseline Survey (for RF study participants)—APPROVED October 31, 2012

(4) Introductory Script (for HM program staff to discuss with program applicants)

(5) Baseline Survey (for HM study participants)

(6) RF study Management Information System (MIS)—APPROVED October 31, 2012

(7) HM study Management Information System (MIS)

(8) Semi-structured interview topic guide (for program staff)

(9) On-line survey (for program staff)

(10) Telephone interview guide (for program staff at referral organizations)

(11) On-line Working Alliance Inventory (for program staff and participants)

(12) Focus group discussion guide (for program participants)

(13) Telephone interview guide (for program dropouts)

(14) In-person, in-depth interview guide (for program participants)

(15) Telephone check-in guide (for program participants)

(16) Semi-structured interview topic guide (for program staff)

(17) Focus group discussion guide (for program participants)

(18) Questionnaire (for program participants in focus groups)

Respondents: Program applicants, program participants, program staff, and staff at referral agencies. Specific respondents per instrument are noted in the burden tables below.

Annual Burden Estimates

New instruments submitted for approval are included in the table below.

Instrument respondent	Annual number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden hours
IMPACT				
Healthy Marriage Grantee Impact Evaluation				
(4) Introductory script Program staff	30	70.2	0.167	351
Program applicants	4,210	1	0.167	702
(5) Baseline survey Study participants	4,000	1	0.5	2,000
Healthy Marriage Grantee Implementation Evaluation—MIS				
(7) HM Study MIS Program staff	30	3,400	0.033	3,400
Responsible Fatherhood and Healthy Marriage Grantee Implementation Evaluation—Additional Implementation Data Collection Instruments				
(8) Semi-structured interview topic guide Program staff	250	2	1.03	517
(9) On-line survey Program staff	250	2	0.5	250
(10) Telephone interviews (with staff at referral organizations):				
Program staff at referral organizations	50	1	0.5	25
(11) On-line Working Alliance Inventory:				
(1) Program staff	50	20	0.167	167
(2) Program Participants	1,000	1	0.167	167
(12) Focus group guide Program participants	600	1	1.5	900
(13) Telephone interviews Program participants (program dropouts)	150	1	0.25	38
Responsible Fatherhood Grantee Qualitative Evaluation				
(14) Guide for in-person, in-depth interviews Study participants	32	3	2	192
(15) Check-in call guide Study participants	32	4	0.167	21
IMPLEMENTATION/QUALITATIVE ONLY				
Responsible Fatherhood Grantee Implementation Evaluation—Grantees With a Focus on Hispanic Populations				
(16) Semi-structured interview topic guide Program staff	42	1	1.5	63
(17) Focus group guide Program participants	20	1	1.5	30
(18) Questionnaires Program participants in focus groups	20	1	0.333	7
Total				8,830

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2013–04307 Filed 2–27–13; 8:45 am]

BILLING CODE 4184–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0134]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mammography Quality Standards Act Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on

the estimated reporting, recordkeeping, and third-party disclosure burden associated with the Mammography Quality Standards Act requirements.

DATES: Submit either electronic or written comments on the collection of information by April 29, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Mammography Quality Standards Act Requirements—21 CFR Part 900 (OMB Control Number 0910–0309)—Extension

The Mammography Quality Standards Act requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation and certification bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. Under the regulations, as a first step in becoming certified, mammography facilities must become accredited by an FDA-approved accreditation body (AB). This requires undergoing a review of their clinical images and providing the AB with information showing that they meet the equipment, personnel, quality assurance and quality control standards, and have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer complaint mechanism. On the basis of this accreditation, facilities are then certified by FDA or an FDA-approved State certification agency and must prominently display their certificate. These actions are taken to ensure safe, accurate, and reliable mammography on a nationwide basis.

The following sections of Title 21 of the Code of Federal Regulations (CFR) are not included in the burden tables because they are considered usual and customary practice and were part of the standard of care prior to the implementation of the regulations. Therefore, they resulted in no additional burden: 21 CFR 900.12(c)(1) and (c)(3) and 21 CFR 900.3(f)(1). Section 900.24(c) was also not included in the burden tables because if a certifying State had its approval withdrawn, FDA would take over certifying authority for the affected facilities. Because FDA already has all the certifying State's electronic records, there wouldn't be an additional reporting burden.

We have rounded numbers in the ''Total Hours'' column in all three burden tables. (Where the number was a portion of one hour, it has been rounded to 1 hour. All other ''Total Hours'' have been rounded to the nearest whole number.)

We do not expect any respondents for § 900.3(c) because all four ABs are approved until April 2020.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity/21 CFR Section/FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [1]	Total capital costs	Total operating & maintenance costs
Notification of intent to become an AB—900.3(b)(1)	0.33	1	0.33	1	1	.....	.....
Application for approval as an AB; full [2]—900.3(b)(3)	0.33	1	0.33	320	106	$10,000	.....
Application for approval as an AB; limited [3]—900.3(b)(3)	5	1	5	30	150	.....	.....
AB renewal of approval—900.3(c)	0	1	0	15	1	.....	.....
AB application deficiencies—900.3(d)(2)	0.1	1	0.1	30	3	.....	.....
AB resubmission of denied applications—900.3(d)(5)	0.1	1	0.1	30	3	.....	.....
Letter of intent to relinquish accreditation authority—900.3(e)	0.1	1	0.1	1	1	.....	.....
Summary report describing all facility assessments—900.4(f)	330	1	330	7	2,310	.....	$77,600
AB reporting to FDA; facility [4]—900.4(h)	8,654	1	8,654	1	8,654	.....	4,327
AB reporting to FDA; AB [5]—900.4(h)	5	1	5	10	50	.....	.....
AB financial records—900.4(i)(2)	1	1	1	16	16	.....	.....

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN—Continued

Activity/21 CFR Section/FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [1]	Total capital costs	Total operating & maintenance costs
Former AB new application—900.6(c)(1)	0.1	1	0.1	60	6		
Reconsideration of accreditation following appeal—900.15(d)(3)(ii)	1	1	1	2	2		
Application for alternative standard—900.18(c)	2	1	2	2	4		
Alternative standard amendment—900.18(e)	10	1	10	1	10		
Certification agency application—900.21(b)	0.33	1	0.33	320	106		$208
Certification agency application deficiencies—900.21(c)(2)	0.1	1	0.1	30	3		
Certification electronic data transmission—900.22(h)	5	200	1000	0.083	83	$30,000	
Changes to standards—900.22(i)	2	1	2	30	60		$20
Certification agency minor deficiencies—900.24(b)	1	1	1	30	30		
Appeal of adverse action taken by FDA—900.25(a)	0.2	1	0.2	16	3		
Inspection fee exemption—FDA Form 3422	700	1	700	0.25	175		
Total					11,777	40,000	82,155

[1] Total hours have been rounded.
[2] One time burden.
[3] Refers to accreditation bodies applying to accredit specific full-field digital mammography units.
[4] Refers to the facility component of the burden for this requirement.
[5] Refers to the AB component of the burden for this requirement.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

Activity/21 CFR Section	No. of recordkeepers	No. of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [1]	Total capital costs	Total operating and maintenance costs
AB transfer of facility records—900.3(f)(1)	0.1	1	0.1	0	1		
Consumer complaints system; AB—900.4(g)	5	1	5	1	5		
Documentation of interpreting physician initial requirements—900.12(a)(1)(i)(B)(*2*)	87	1	87	8	696		
Documentation of interpreting physician personnel requirements—900.12(a)(4)	8,654	4	34,616	1	34,616		
Permanent medical record—900.12(c)(4)	8,654	1	8,654	1	8,654	$28,000	
Procedures for cleaning equipment—900.12(e)(13)	8,654	52	450,008	0.083	37,351		
Audit program—900.12(f)	8,654	1	8,654	16	138,464		
Consumer complaints system; facility—900.12(h)(2)	8,654	2	17,308	1	17,308		
Certification agency conflict of interest—900.22(a)	5	1	5	1	5		
Processes for suspension and revocation of certificates—900.22(d)	5	1	5	1	5		
Processes for appeals—900.22(e)	5	1	5	1	5		
Processes for additional mammography review—900.22(f)	5	1	5	1	5		
Processes for patient notifications—900.22(g)	3	1	3	1	3		$30
Evaluation of certification agency—900.23	5	1	5	20	100		
Appeals—900.25(b)	5	1	5	1	5		
Total					237,223	28,000	30

[1] Total hours have been rounded.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURES [1]

Activity/21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]	Total operating and maintenance costs
Notification of facilities that AB relinquishes its accreditation—900.3(f)(2)	0.1	1	0.1	200	20	$50
Clinical images; facility [2]—900.4(c), 900.11(b)(1), and 900.11(b)(2)	2,885	1	2,885	1.44	4,154	.....
Clinical images; AB [3]—900.4(c)	5	1	5	416	2,080	230,773
Phantom images; facility [2]—900.4(d), 900.11(b)(1), and 900.11(b)(2)	2,885	1	2,885	0.72	2,077	.....
Phantom images; AB [3]—900.4(d)	5	1	5	208	1,040	.....
Annual equipment evaluation and survey; facility [2]—900.4(e), 900.11(b)(1), and 900.11(b)(2)	8,654	1	8,654	1	8,654	8,654
Annual equipment evaluation and survey; AB [3]—900.4(e)	5	1	5	1,730	8,650	.....
Provisional mammography facility certificate extension application—900.11(b)(3)	0	1	0	0.5	1	.....
Mammography facility certificate reinstatement application—900.11(c)	312	1	312	5	1,560	24,000,000
Lay summary of examination—900.12(c)(2)	8,654	5,085	44,005,590	0.083	3,652,464	.....
Lay summary of examination; patient refusal [4]—900.12(c)(2)	87	1	87	0.5	44	.....
Report of unresolved serious complaints—900.12(h)(4)	20	1	20	1	20	.....
Information regarding compromised quality; facility [2]—900.12(j)(1)	20	1	20	200	4,000	300
Information regarding compromised quality; AB [3]—900.12(j)(1)	20	1	20	320	6,400	600
Patient notification of serious risk—900.12(j)(2)	5	1	5	100	500	19,375
Reconsideration of accreditation—900.15(c)	5	1	5	2	10	.....
Notification of requirement to correct major deficiencies—900.24(a)	0.4	1	0.4	200	80	68
Notification of loss of approval; major deficiencies—900.24(a)(2)	0.15	1	0.15	100	15	25.50
Notification of probationary status—900.24(b)(1)	0.3	1	0.3	200	60	51
Notification of loss of approval; minor deficiencies—900.24(b)(3)	0.15	1	0.15	100	15	25.50
Total	.....	.....	.....	.....	3,691,842	24,259,921

[1] There are no capital costs associated with this collection of information.
[2] Total hours have been rounded.

Dated: February 22, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04677 Filed 2–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–E–0156]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZYTIGA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZYTIGA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZYTIGA (abiraterone acetate). ZYTIGA is indicated for use in combination with prednisone for the treatment of patients with metastatic castration-resistant prostate cancer who have received prior chemotherapy containing docetaxel. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZYTIGA (U.S. Patent No. 5,604,213) from BTG International LTD, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 9, 2012, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZYTIGA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZYTIGA is 1,927 days. Of this time, 1,797 days occurred during the testing phase of the regulatory review period, while 130 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* January 19, 2006. The applicant claims January 28, 2006, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 19, 2006, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 20, 2010. FDA has verified the applicant's claim that the new drug application (NDA) for ZYTIGA (NDA 202–379) was submitted on December 20, 2010.

3. *The date the application was approved:* April 28, 2011. FDA has verified the applicant's claim that NDA 202–379 was approved on April 28, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,024 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by April 29, 2013. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2013. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document. Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04645 Filed 2–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–E–0162]

Determination of Regulatory Review Period for Purposes of Patent Extension; LAVIV

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LAVIV and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product LAVIV (azficel-T). LAVIV is an autologous cellular product indicated for improvement of moderate to severe

nasolabial fold wrinkles in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LAVIV (U.S. Patent No. 5,591,444) from Fibrocell Technologies, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 10, 2012, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of LAVIV represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LAVIV is 3,338 days. Of this time, 2,500 days occurred during the testing phase of the regulatory review period, while 838 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 3, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 3, 2002.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: March 6, 2009. FDA has verified the applicant's claim that the biologics license application (BLA) for LAVIV (BLA 125348) was initially submitted on March 6, 2009.

3. *The date the application was approved:* June 21, 2011. FDA has verified the applicant's claim that BLA 125348 was approved on June 21, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by April 29, 2013. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2013. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 15, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04646 Filed 2–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0169]

Draft Guidance for Industry and Review Staff on Pediatric Information Incorporated Into Human Prescription Drug and Biological Products Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and review staff entitled ''Pediatric Information Incorporated into Human Prescription Drug and Biological Products Labeling.'' This draft guidance is intended to assist applicants and FDA review staff in making decisions about the placement and content of pediatric information in human prescription drug and biological products labeling in accordance with the Best Pharmaceuticals for Children Act (BPCA) and the Pediatric Research Equity Act (PREA), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), as well as FDA prescription drug and biological product labeling regulations.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 29, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Matthew Bacho, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6420, Silver Spring, MD 20993–0002, 301–796–0067; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and review staff entitled ''Pediatric Information Incorporated into Human Prescription Drug and Biological Products Labeling.'' In July 2012, FDASIA (Pub. L. 112–144) reauthorized and made permanent the BPCA and PREA. The goal of both the BPCA and PREA is to provide pediatric information in drug labeling to encourage the appropriate use of drugs in treating pediatric patients.

Data submitted in response to a pediatric Written Request under the BPCA and assessments submitted in response to a PREA study requirement must be described in labeling, whether the findings are positive, negative, or inconclusive (sections 505A and 505B of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(a) and 21 U.S.C. 355(c)) as amended by

FDASIA). In addition, when pediatric studies under PREA are fully or partially waived by FDA because there is evidence that a drug would be ineffective or unsafe in a pediatric population or pediatric subpopulation, the safety concern or lack of efficacy must be reflected in the prescription drug labeling (section 505B(a)(4)(D) of the FD&C Act). All useful information on the use of drugs and biological products in the pediatric population should be consistently placed in the proper sections within prescription labeling so that the information is clear and accessible to health care providers.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on incorporating pediatric information into human prescription drug and biological products labeling. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*, or *http://www.regulations.gov*.

Dated: February 22, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04625 Filed 2–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: The Health Education Assistance Loan (HEAL) Program Regulations (OMB No. 0915–0108)—Extension

Abstract: The Health Education Assistance Loan (HEAL) Program has regulations that contain notification, reporting, and recordkeeping requirements to insure that the lenders and holders participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under the OMB number referenced above, much of the burden associated with the regulations is cleared under separate OMB numbers for the HEAL forms and electronic submissions used to report required information. The table below provides the estimate of burden for the remaining regulations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

REPORTING REQUIREMENTS

Number of respondents	Number of transactions	Total transactions	Hours per response (min)	Total burden hours
13 Holders	4	52	12	10.40
0 Schools	0	0	0	0
Total Reporting				10.40

NOTIFICATION REQUIREMENTS

Number of respondents	Number of transactions	Total transactions	Hours per response (min)	Total burden hours
15,000 Borrowers	1	15,000	10	2,500.00
13 Holders	6,500	84,500	10	14,083.33
0 Schools	0	0	0	0
Total Notification				16,583.33

RECORDKEEPING REQUIREMENTS

Number of respondents	Number of transactions	Total transactions	Hours per response (min)	Total burden hours
13 Holders	2,600	33,800	14	7,886.67
0 Schools	0	0	0	0
Total Recordkeeping				7,886.67
Total Burden Hours				24,480.40

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: February 21, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–04723 Filed 2–27–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its seventy-second meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Time: April 3, 2013, 9:00 a.m.–5:00 p.m. April 4, 2013, 9:00 a.m.–5:00 p.m. April 5, 2013, 8:45 a.m.–11:15 a.m.

Place: Hospice & Palliative Care of Western Colorado, 3090 North 12th Street, Unit B, Grand Junction, CO 81506, Web site: *www.hospicewco.com.*

Phone: (970) 241–2212.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development, and administration of health and human services in rural areas.

Agenda: Wednesday morning, at 9:00 a.m., the meeting will be called to order by the Chairman of the Committee, the Honorable Ronnie Musgrove. The Committee will be examining hospice and palliative care for rural patients and efforts to ameliorate rural poverty. The day will conclude with a period of public comment at approximately 5:00 p.m.

Thursday morning, at approximately 9:00 a.m., the Committee will break into Subcommittees and depart for site visits to rural healthcare and human services providers in Colorado. One panel from the Health Subcommittee will visit Family Health West Hospital in Fruita, CO. Another panel from the Health Subcommittee will visit Plateau Valley Clinic in Collbran, CO. The Human Services Subcommittee will visit Montrose County Health and Human Services in Montrose, Colorado. The day will conclude at the Doubletree Hilton Grand Junction with a period of public comment at approximately 5:00 p.m.

The final session will be convened on Friday morning at 9:00 a.m. The Committee will summarize key findings from the meeting and develop a work plan for the next quarter and the following meeting. The meeting will adjourn at 11:15 a.m.

For Further Information Contact: Steve Hirsch, MSLS, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 5A–05, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Nathan Nash at the Office of Rural Health Policy (ORHP) via telephone at (301) 443–0835 or by email at *nnash@hrsa.gov.* The Committee meeting agenda will be posted on ORHP's Web site *http://www.hrsa.gov/advisorycommittees/rural/.*

Dated: February 21, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–04652 Filed 2–27–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: Request for Human Embryonic Stem Cell Line To Be Approved for Use in NIH Funded Research

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Extramural Research (OER), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the

following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Ellen Gadbois, Office of Science Policy, Office of the Director, NIH, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301)–496–1454 or Email your request, including your address to: *gadboisel@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Request for Human Embryonic Stem Cell Line to be Approved for Use in NIH Funded Research. OMB No. 0925–0601—Expiration Date 4/30/2013—Extension—Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: The form is used by applicants to request that human embryonic stem cell lines be approved for use in NIH funded research. Applicants may submit applications at any time.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,375.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH grantees and others with hESC lines	50	3	22.5	3,375

Dated: February 21, 2013.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2013–04669 Filed 2–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Program Projects in Drug Metabolism.

Date: March 22, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Clinical Trials: Sepsis.

Date: March 25, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 21, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04579 Filed 2–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; 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 Minority Health and Health Disparities Special Emphasis Panel.

Date: March 8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II Building, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Netty, MD, Chief, Scientific Review Officer, National Institute On Minority Health, and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 496–3996, *NETTEYR@MAIL.NIH.GOV.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 22, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04583 Filed 2–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a conference call of the Interagency Autism Coordinating Committee (IACC).

The IACC Full Committee will have a conference call meeting on Tuesday, March 19, 2013. The committee will discuss public comment, emerging issues, and future committee activities. The conference call will be publicly accessible in listen-only mode.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Conference Call.

Date: March 19, 2013.

Time: 10:00 a.m. to 11:30 a.m. *Eastern Time*—Approximate end time.

Agenda: To discuss public comment, emerging issues, and future committee activities.

Written Public Comments: Due by 5:00 p.m. ET on Tuesday, March 12, 2013.

Place: Conference call only; No in-person meeting.

Conference Call: Dial: 888–790–3414; Access code: 3436665.

Cost: The conference call is free.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 6182A, Rockville, MD 20852, Phone: (301) 443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The conference call will be open to the public in listen-only mode. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call, please-email *iacchelpdesk2012@gmail.com* or call the IACC Technical Support Help Line at 301–339–3840.

Written Public Comments: Written public comments may be submitted to the postal or email address above by 5:00 p.m. ET on Tuesday, March 12, 2013.

Accommodations Statement: Individuals who participate by using this conference call service and who need special assistance such as captioning or other reasonable accommodations should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

Schedule subject to change.

Information about the IACC and a registration link for this meeting are available on the Web site: *www.iacc.hhs.gov.*

Dated: February 22, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy .

[FR Doc. 2013–04580 Filed 2–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Hematology.

Date: March 19, 2013.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel AREA Review: Cardiovascular and Respiratory Sciences.

Date: March 21–22, 2013.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301)435–1195, *Chengy5@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: February 22, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04582 Filed 2–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Control Regulatory Research.

Date: March 5, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 22, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04581 Filed 2–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of m971 and m972 Chimeric Antigen Receptors (CARs) for the Treatment of B Cell Malignancies

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in (a) U.S. Patent Application 61/717,960 entitled ''M971 Chimeric Antigen Receptors'' [HHS Ref. E–291–2012/0–US–01], and (b) U.S. Patent Application 61/042,239 entitled ''Human Monoclonal Antibodies Specific for CD22'' [HHS Ref. E–080–2008/0–US–01], PCT Application PCT/US2009/124109 entitled ''Human and Improved Murine Monoclonal Antibodies Against CD22'' [HHS Ref. E–080–2008/0–PCT–02], US patent application 12/934,214 entitled ''Human Monoclonal Antibodies Specific for CD22 '' [HHS Ref. E–080–2008/0–US–03], and all related continuing and foreign patents/patent applications for these technology families, to Neomune, Inc. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to:

Treatment of B cell malignancies that express CD22 on their cell surface using chimeric antigen receptors which contain the m971 or m972 antibody binding fragments.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 1, 2013 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; Email: *lambertsond@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: Chimeric antigen receptors (CARs) are engineered cell surface receptors which have been designed to target immune effector cells (such as a T cell) to certain cellular targets. CARs target diseased cells through antigen-specificity domain recognizes a protein that is preferentially expressed on the cells, and the immune effector cell proceeds to eradicate the diseased cells. Since there are a number of cell surface proteins that are preferentially expressed on cancer cells, CARs are potential therapeutic candidates in the treatment of cancer.

The specific CARs for which this exclusive license may be granted comprise a targeting domain which contains the antibody binding fragments of the anti-CD22 antibodies m971 and m972. CD22 is a cell surface protein that is preferentially expressed on several types of cancer cells, including hematological malignancies such as chronic lymphocytic leukemia (CLL), acute lymphocytic leukemia (ALL), hairy cell leukemia (HCL) and non-Hodgkin's lymphoma (NHL). By linking an anti-CD22 antibody binding fragment to a CAR, it is possible to selectively kill the CD22-expressing cancer cells, leaving non-cancer cells alone. This results in an effective therapeutic strategy with fewer side effects than a non-targeted therapy.

The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 within thirty (30) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 22, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–04585 Filed 2–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1156]

Guidance Regarding Inspection and Certification of Vessels Under the Maritime Security Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Navigation and Vessel Inspection Circular (NVIC) 01–13, ''Inspection and Certification of Vessels Under the Maritime Security Program (MSP).'' The MSP serves as a means for establishing a fleet of commercially viable and militarily useful vessels to meet national defense as well as other security requirements. NVIC 01–13 sets forth the Coast Guard's policies and procedures regarding the inspection and certification of vessels under the MSP. NVIC 01–13 provides a comprehensive approach to the MSP inspection process through the establishment of two levels of MSP inspection and oversight.

DATES: NVIC 01–13 is effective as of February 28, 2013.

ADDRESSES: To view the documents mentioned in this notice, go to *http://www.regulations.gov* and use ''USCG–2012–1156'' as your search term. Locate this notice in the search results, and use the filters on the left side of the page to locate specific documents by type. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. John Hannon, Domestic Vessels Division, U.S. Coast Guard; telephone 202–372–1222, email *John.J.Hannon@uscg.mil.* If you have questions on viewing material in the docket, call Docket Operations at 202–366–9826.

SUPPLEMENTARY INFORMATION:

Viewing the NVIC and other documents: To view NVIC 01–13 and related documents, go to *http://www.regulations.gov,* use ''USCG–2011–1156'' as your search term, and follow the instructions in the **ADDRESSES** section above.

Background and Purpose

Title VI of the Merchant Marine Act of 1936, as amended by the Maritime Security Act of 1996 (MSA) (Pub. L. 104–239), authorized the establishment of a Maritime Security Fleet under the Maritime Security Program (MSP). The MSP serves as a means for establishing a fleet of commercially viable and militarily useful vessels to meet national defense as well as other security requirements.

The U.S. Maritime Administration (MARAD) Office of Sealift Support is the lead governmental office responsible for administration of the MSP. MARAD, in coordination with the Department of Defense, established a program whereby certain categories of militarily useful commercial vessels may be designated for emergency service to carry military cargo in time of war, national emergency, or military contingency. Some vessels enrolled in the MSP may receive a payment as part of their enrollment. Alternatively, vessels may enroll in other voluntary sealift support programs established by MARAD.

Section 53102(e) of Title 46 U.S.C. established standards for issuance of a Coast Guard Certificate of Inspection (COI) to a previously foreign-flagged vessel transitioning to U.S.-flagged once eligibility for the MSP has been established by MARAD and the Coast Guard. The statute does not specify the scope or manner of the inspections to be carried out by the Coast Guard to verify that MSP vessels fulfill requirements necessary to receive and maintain a COI.

The purpose of NVIC 01–13 is to provide the marine industry and Coast Guard personnel with uniform guidance regarding the MSP. Vessels that meet MSP enrollment criteria may obtain a COI by following the processes outlined in NVIC 01–13.

On January 19, 2012, the Coast Guard published a notice in the **Federal Register** announcing the availability of a draft NVIC 01–13 and requesting public comments on the draft (*See* 77 FR 2741). The Coast Guard recognized the need to avoid the inconsistent application of inspection procedures under the MSP. Accordingly, draft NVIC 01–13 outlined the inspection process for vessels transitioning from foreign-flag to U.S.-flag to obtain initial and ongoing certification under the MSP. To promote consistency and standardization of Coast Guard policies and procedures, draft NVIC 01–13 set forth a comprehensive approach to the MSP inspection process through the establishment of two levels of MSP inspection and oversight: (1) MSP (Regular); and (2) MSP Select. This two-level approach would enable the Coast Guard to apply traditional inspection methods to newly reflagged vessels, while at the same time apply a less stringent level of oversight to vessels that have consistently demonstrated satisfactory performance and substantial compliance with applicable rules. Newly enrolled MSP vessels would continue to be inspected by the Coast Guard in a manner similar to traditional Coast Guard inspections. After a period of evaluation, MSP vessels would be eligible to seek enrollment under MSP Select. MSP Select vessel oversight would consist of risk-based vessel examinations, periodic oversight, and evaluations of Authorized Class Society (ACS) survey activities.

We received eight public comment letters in response to the January 19, 2012 **Federal Register** notice. These comment letters contained a total of approximately 60 specific recommendations, suggestions, and other comments. We have created a document that provides a summary of each comment and the corresponding Coast Guard response. A copy of this public comment matrix is available for viewing in the public docket for this notice. You may access the docket going to *http://www.regulations.gov,* using ''USCG–2011–1156'' as your search term, and following the instructions in the **ADDRESSES** section above.

The basic framework of draft NVIC 01–13 described above is retained in the final version. The Coast Guard has made some changes from the draft version of NVIC 01–13 to the final version based on the public comments. A brief discussion of the most important changes is provided below. For more detailed information, please consult the actual public comment letters and public comment matrix in the docket.

(1) One commenter requested that we relax the standards for enrollment into the MSP Select Program by evaluating the ship operating company's regulatory compliance record over the most recent 5-year period. The commenter suggested that if the operator is found to be fully compliant during that period, all of its vessels should be permitted to enroll in MSP Select. We disagree. We believe that a vessel-specific approach is more appropriate for sufficiently and effectively evaluating regulatory compliance. While we disagree with the commenter's approach, we have decided to reduce the performance verification period from 5 years to 3 years in order to lessen the burden on vessel operators.

(2) In response to a commenter's request, we provided more detail regarding Marine Inspector requirements, requisite qualifications, and duties associated with the MSP. We have added the requested language in Sections 2.2.1. and 2.2.2. of NVIC 01–13.

(3) We received a number of comments pertaining to engine automation, the applicability of Engine International Air Pollution Prevention (EIAPP) certificates, and the procedures for underwater survey in lieu of drydocking (UWILD). In response to these comments, we provided additional clarification regarding vessel automation approval, EIAPP certification, and UWILD procedures.

This notice is issued under authority of 5 U.S.C. 552(a), 46 U.S.C. 53102(e), and Department of Homeland Security Delegation No. 0170.1(1).

Dated: February 22, 2013.

Paul F. Thomas,

Captain, U.S. Coast Guard, Director, Inspections and Compliance.

[FR Doc. 2013–04732 Filed 2–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2012–N154; FXRS12650400000S3–123–FF04R02000]

Clarks River National Wildlife Refuge, KY; Final Comprehensive Conservation Plan/Land Protection Plan, and Finding of No Significant Impact for the Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the

availability of the final comprehensive conservation plan (CCP)/land protection plan (LPP), and finding of no significant impact for the environmental assessment for Clarks River National Wildlife Refuge (NWR) in Graves, Marshall, and McCracken Counties, Kentucky. In the final CCP/LPP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the final CCP/LPP by writing to: Mr. Michael Johnson, Clarks River NWR, P.O. Box 89, Benton, KY 42025. Alternatively, you may download the document from our Internet Site, *http://southeast.fws.gov/planning/,* under ''Final Documents.''

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnson at 270/527–5770 (telephone); 270/703–2963 (fax); *michael_johnson@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP/LPP process for Clarks River NWR. We started the process through a notice in the **Federal Register** on August 29, 2008 (73 FR 50981). For more about the process, see that notice.

Clarks River NWR was established in 1997. The acquisition boundary currently approved by Congress is approximately 18,000 acres, of which 8,634 acres have been purchased. The lands are distributed among three counties as follows: Graves County (56 acres), Marshall County (5,970 acres), and McCracken County (2,608 acres). Lands are purchased on a willing-seller basis only.

Approximately 74 percent of the land associated with Clarks River NWR is forested, 22 percent is agricultural, and 2 percent is freshwater marsh/shrub swamp with managed impoundments, native warm-season grasses, and disturbed lands (roads, utility corridors, etc.), comprising less than 1 percent each. Refuge lands are managed for all plants and animals that occur in the area of western Kentucky, with a primary emphasis on migratory songbirds and waterfowl, game species, and listed species. Refuge goals and objectives are achieved through forest management, cooperative farming, habitat restoration, water management, and prescribed fire.

We announce our decision and the availability of the final CCP/LPP and FONSI for Clarks River NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

The final CCP/LPP will guide us in managing and administering Clarks River NWR for the next 15 years. The LPP will expand the current acquisition boundary of Clarks River NWR by 34,269 acres, bringing the total refuge acquisition boundary to approximately 53,874 acres. This acquisition will enable us to protect lands along the east and west fork of the Clarks River.

The compatibility determinations for (1) Hunting; (2) fishing; (3) wildlife observation and photography; (4) environmental education and interpretation; (5) nuisance animal control; (6) outdoor recreation including non-motorized boating, walking, hiking, jogging, and bicycling; (7) research and monitoring; (8) horseback riding; and (9) mobility-impaired all-terrain vehicle access are also available in the final CCP/LPP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

Approximately 300 copies of the Draft CCP/EA were made available for a 30-day public review period as announced in the **Federal Register** on February 15, 2012 (77 FR 8890). More than 270 people attended and many submitted comments at three public meetings held to discuss the Draft CCP/EA. A total of 55 respondents submitted written comments on the Draft CCP/EA by mail or email. The Draft CCP/EA identified and evaluated three alternatives for managing the refuge over the next 15 years.

Selected Alternative

After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative B for implementation. Alternative B emphasizes management of the natural resources of Clarks River NWR based on maintaining and improving wetland habitats, monitoring targeted flora and fauna representative of the surrounding Clarks River watershed, and providing quality public use programs and wildlife-dependent recreational activities. Certain targeted species will be managed and monitored in addition to species of Federal responsibility. These species will be chosen based on the criteria that they are indicators of the health of important habitat. Information gaps in our knowledge of the refuge's aquatic species will be addressed.

Restoration efforts, habitat management, forest management, and the prescribed fire program will reflect best management practices determined after examination of historical regimes, soil types and elevation, and the current hydrological system. Management actions will be monitored for effectiveness and adapted to changing conditions and technology. We will develop a Habitat Management Plan to guide future habitat projects and evaluate previous actions.

Public use programs will be improved by offering more facilities and wildlife observation areas. We will monitor public use to determine if there are any negative impacts occurring due to overuse of the resources. Public use programs will be updated to support and teach reasons behind management actions, and to provide quality experiences to visitors. The refuge headquarters will be developed to provide more visitor services, and a new visitor center will be constructed. We will strive for a balanced program of wildlife-dependent recreational activities while protecting wildlife resources. Archaeological resources will be surveyed.

We currently have fee-title ownership of about 8,634 acres, with an approved acquisition boundary of 19,605 acres. Fee-title lands are distributed as follows: Graves County (56 acres), Marshall County (5,970 acres), and McCracken County (2,608 acres). Lands are purchased on a willing-seller basis only. Alternative B includes an acquisition boundary expansion of 34,269 acres, bringing the total refuge acquisition boundary to approximately

53,874 acres that would protect lands along the east and west fork of the Clarks River. Land acquisitions within the existing and expanded acquisition boundaries will be based on importance of the habitat for target management species. We will offer wildlife-dependent public use of refuge wildlife and habitats, as well as demonstrate habitat improvements.

Under Alternative B, our management decisions and actions will support wildlife species and habitats occurring on the refuge based on well-planned strategies and sound scientific judgment. Quality wildlife-dependent recreational uses and environmental education and interpretation programs will be offered to support and explain the natural resources of the refuge.

We will add six new positions to current staffing in order to continue to protect resources, provide visitor services, and attain goals of facilities and equipment maintenance in the future. The biological environment will improve as adaptive and best management practices are utilized. Socioeconomic values should increase as the refuge offers more wildlife-dependent recreational opportunities. The refuge is beneficial to local ecotourism trade and residents searching for natural landscapes and the associated benefits.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd et seq.).

Dated: July 27, 2012.

Mark J. Musaus,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register February 25, 2013.

[FR Doc. 2013–04639 Filed 2–27–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–0087; FF09A30000 FXIA16710900000 134]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Sixteenth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the sixteenth regular meeting of the Conference of the Parties to CITES (CoP16) in Bangkok, Thailand, during March 3–14, 2013. This notice announces the availability of tentative U.S. negotiating positions on amendments to the CITES Appendices (species proposals), draft resolutions and decisions, and agenda items submitted by other countries and the CITES Secretariat for consideration at CoP16.

ADDRESSES: Copies of tentative U.S. negotiating positions on amendments to the CITES Appendices (species proposals), draft resolutions and decisions, and agenda items submitted by other countries and the CITES Secretariat for consideration at CoP16 are available:

- *Electronically at: http//www.regulations.gov* at Docket No. FWS–R9–IA–2011–0087, or on our Web site at *http://www.fws.gov/international/cites/cop16/index.html;*
- *By email request to: managementauthority@fws.gov;* or
- *By postal mail or in person, by appointment, at:* Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, decisions, and agenda items contact: Robert R. Gabel, Chief, Division of Management Authority; telephone, 703–358–2095; email, *managementauthority@fws.gov*. For information pertaining to species proposals contact: Dr. Rosemarie Gnam, Chief, Division of Scientific Authority; telephone, 703–358–1708; email, *scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, referred to here as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These species are listed in Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/app/index.php*. Currently (as of January 29, 2013), 177 countries, including the United States, are Parties to CITES. The Convention calls for a meeting of the Conference of the Parties at least once every 2 years to review its implementation, make provisions enabling the CITES Secretariat to carry out its functions, consider amendments to the lists of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, and draft resolutions, decisions, and agenda items for consideration by all the Parties. Accredited nongovernmental organizations (NGOs) may participate in the meeting as approved observers and may speak during sessions when recognized by the meeting Chairman, but they may not vote or submit proposals.

This is our seventh in a series of **Federal Register** notices on the development of U.S. submissions and tentative negotiating positions for CoP16. In this notice, we announce the availability of tentative U.S. negotiating positions on species proposals, draft resolutions and decisions, and agenda items submitted by other Parties and the Secretariat for consideration at CoP16. The **ADDRESSES** section, above, explains how to obtain a copy of all of this information. We published our first CoP16-related **Federal Register** notice on June 14, 2011 (76 FR 34746), and with it we requested information and recommendations on species proposals for the United States to consider for submission to CoP16, and we also outlined our approach for the meeting. We published our second CoP16-related **Federal Register** notice on November 7, 2011 (76 FR 68778), and with it we requested information and recommendations on resolutions, decisions, and agenda items for the United States to consider submitting for consideration at CoP16. We published our third such **Federal Register** notice on April 11, 2012 (77 FR 21798), and with it we announced taxa that the United States was considering submitting for consideration at CoP16. In our fourth **Federal Register** notice, published on June 21, 2012 (77 FR 37433), we informed the public of proposed resolutions, decisions, and agenda items that we were considering for submission for CoP16. This notice took into account all public comments received in response to the **Federal Register** notice published on November 7, 2011. In our fifth **Federal Register** notice, published on November 9, 2012 (77 FR 67390), we announced the provisional agenda for CoP16, solicited

comments on the items on the provisional agenda, and announced a public meeting for December 5, 2012. In our sixth **Federal Register** notice, published on November 28, 2012 (77 FR 71012), we announced a revised date for the public meeting: December 13, 2012.

You may obtain information on the above **Federal Register** notices from the following sources. For information on draft resolutions and decisions, and agenda items, contact the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, above); and for information on species proposals, contact the Division of Scientific Authority, U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 110; Arlington, VA 22203; telephone 703–358–1708; email, *scientificauthority@fws.gov*. Our regulations governing this public process are found in 50 CFR 23.87. Pursuant to 50 CFR 23.87(a)(3)(iii), with this notice we are posting on *http://www.regulations.gov* (see Docket No. FWS–R9–IA–2011–0087) and on our Web site (*http://www.fws.gov/international/publications-and-media/federal-register-notices.html*) a summary of our proposed negotiating positions on the items included in the CoP16 agenda and proposed amendments to the Appendices, and the reasons for our proposed positions.

Tentative Negotiating Positions

On *http://www.regulations.gov* (see Docket No. FWS–R9–IA–2011–0087) and on our Web site (*http://www.fws.gov/international/publications-and-media/federal-register-notices.html*), we summarize the tentative U.S. negotiating positions on proposals to amend the Appendices (species proposals), draft resolutions and decisions, and agenda items that have been submitted by other countries and the CITES Secretariat. Documents submitted by the United States either alone or as a co-proponent for consideration by the Parties at CoP16 can be found on the Secretariat's Web site at: *http://www.cites.org/eng/cop/16/doc/index.php*. Those documents are: CoP16 Doc. 40 and (co-sponsored with Botswana and South Africa) Doc. 52. The United States, either alone or as a co-proponent, submitted the following proposals to amend Appendices I and II: CoP16 Props. 3, 28–32, 36–38, 42, 53, and 57. We will not provide any additional explanation of the U.S. negotiating positions for documents and proposals that the United States submitted. The introduction in the text of each of the documents the United States submitted contains a discussion of the background of the issue and the rationale for submitting the document.

Available Information on CoP16

Information concerning the results of CoP16 will be available after the close of the meeting on the Secretariat's Web site at *http://www.cites.org;* or upon request from the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, above); or on our Web site (*http://www.fws.gov/international/cites/cop16/index.html*).

Author

This notice was prepared by Bruce J. Weissgold, Division of Management Authority.

Authority

This notice is published under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 21, 2013.

Rowan W. Gould,

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

[FR Doc. 2013–04573 Filed 2–27–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000 L102000000.ML0000 13XL1109AF.HAG13–0121]

Notice of Public Meeting, Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (EWRAC) will meet as indicated below.

DATES: March 21, 2013.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It will begin at 10 a.m. and end at 2 p.m. on March 21. Members of the public will have an opportunity to address the EWRAC at 10 a.m. The meeting will be held in the City Council Chambers of the City of Moses Lake, 401 S. Balsam, Moses Lake, Washington 98837. Discussion will focus on introduction and orientation for new members, the Eastern Washington and San Juan Resource Management Plan, the U.S. Forest Service Colville Forest Plan Revision, and future Resource Advisory Council business.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: BLM Spokane District, 1103 N. Fancher Rd., Spokane Valley, Washington 99212, or call (509) 536–1200. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Daniel C. Picard,

Spokane District Manager.

[FR Doc. 2013–04635 Filed 2–27–13; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Number 1010–0176]

Information Collection: Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf; Submitted for OMB Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is notifying the public that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. This ICR concerns the paperwork requirements in the regulations under ''Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.'' This notice provides the public a second opportunity to comment on the paperwork burden of this collection.

DATES: Submit written comments by April 1, 2013.

ADDRESSES: Submit comments on this ICR to the Desk Officer for the Department of the Interior at OMB–

OIRA at (202) 395–5806 (fax) or *OIRA_submission@omb.eop.gov* (email). Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Arlene Bajusz, Bureau of Ocean Energy Management, 381 Elden Street, HM–3127, Herndon, Virginia 20170 (mail) or *arlene.bajusz@boem.gov* (email). Please reference ICR 1010–0176 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Office of Policy, Regulations, and Analysis at *arlene.bajusz@boem.gov* (email) or (703) 787–1025 (phone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1010–0176.

Title: 30 CFR 585, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.

Forms: BOEM–0002, BOEM–0003, BOEM–0004, BOEM–0005, BOEM–0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to issue leases, easements, or rights-of-way on the OCS for activities that produce or support production, transportation, or transmission of energy from sources other than oil and gas (renewable energy). Specifically, subsection 8(p) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (Pub. L. 109–58), directs the Secretary of the Interior to issue any necessary regulations to carry out the OCS renewable energy program. The Secretary delegated this authority to the Bureau of Ocean Energy Management (BOEM).

The BOEM has issued regulations at 30 CFR part 585 that establish procedures for administering the renewable energy program on the OCS and for authorizing other energy and marine-related activities that involve the alternate use of existing facilities on the OCS. This notice concerns the reporting and recordkeeping elements required by these regulations.

Respondents operating under these regulations conduct commercial and noncommercial technology projects that include installation, construction, operation and maintenance, and decommissioning of offshore facilities, as well as possible onshore support facilities. The BOEM must ensure that these activities and operations on the OCS are performed in a safe and environmentally sound manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Therefore, BOEM needs information concerning the proposed activities, facilities, safety equipment, inspections and tests, and natural and manmade hazards near the site, as well as assurance of fiscal responsibility.

The BOEM uses forms to collect some information to ensure proper and efficient administration of OCS renewable energy leases and grants and to document the financial responsibility of lessees and grantees. Forms BOEM–0002, BOEM–0003, BOEM–0004, and BOEM–0006 are used by renewable energy entities on the OCS to designate an operator and to assign or relinquish a lease or grant. Form BOEM–0005 is used to procure and submit a bond for the purpose of meeting financial assurance requirements as set forth in the regulations. As a result of respondent input, BOEM is rewording one line on BOEM–0005 to match language on a similar form for the oil and gas program; this does not change the burden. The BOEM maintains the submitted forms as official lease and grant records pertaining to operating responsibilities, ownership, and financial responsibility.

We will protect information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 585.113, addressing disclosure of data and information to be made available to the public and others. No items of a sensitive nature are collected. Responses are mandatory or required to obtain a benefit.

Frequency: On occasion or annually.

Description of Respondents: Companies interested in renewable energy-related uses on the OCS and holders of leases and grants under 30 CFR Part 585.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this collection is 30,902 hours. The following table details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
Subpart A—General Provisions				
102; 105; 110	These sections contain general references to submitting comments, requests, applications, plans, notices, reports, and/or supplemental information for BOEM approval—burdens covered under specific requirements.		0.	
102(e)	State and local governments enter into task force or joint planning or coordination agreement with BOEM.	1	2 agreements	2
103; 904; 910	Request general departures not specifically covered elsewhere in part 585.	2	6 requests	12
105(c)	Make oral requests or notifications and submit written follow up within 3 business days not specifically covered elsewhere in part 585.	1	8 requests	8
106; 107; 213(e); 230(f); 302(a); 408(b)(7); 409(c); 1005(d); 1007(c); 1013(b)(7).	Submit evidence of qualifications to hold a lease or grant; submit required supporting information (electronically if required).	2	20 evidence submissions	40

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
106(b)(1)	Request exception from exclusion or disqualification from participating in transactions covered by Federal non-procurement debarment and suspension system.	1	1 exception	1
106(b)(2), (3); 225; 527(c); 705(c)(2); 1016.	Request reconsideration and/or hearing.	Requirement not considered IC under 5 CFR 1320.3(h)(9)		0
108; 530(b)	Notify BOEM within 3 business days after learning of any action filed alleging respondent is insolvent or bankrupt.	1	1 notice	1
109	Notify BOEM in writing of merger, name change, or change of business form no later than 120 days after earliest of either the effective date or filing date.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
111	Within 30 days of receiving bill, submit processing fee payments for BOEM document or study preparation to process applications and other requests.	.5	4 fee submissions	2
		4 payments × $4,000 = $16,000		
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractor for all or part of any document, study, or other activity, to reduce BOEM processing costs.	2	4 processing fee comments or reduction requests.	8
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity; and provide results to BOEM to reduce BOEM processing fee.	19,000	1 submission	19,000
111(b)(3)	Pay contractor for all or part of any document, study, or other activity, and provide results to BOEM to reduce BOEM processing costs.	3 contractor payments × $950,000 = $2,850,000		
111(b)(7); 118(a); 436(c).	Appeal BOEM estimated processing costs, decisions, or orders pursuant to 30 CFR 590.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
113(b)	Respond to the Freedom of Information Act release schedule.	4	1 agreement	4
115(c)	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1	1 request	1
116	The Director may occasionally request information to administer and carry out the offshore renewable energy program via **Federal Register** Notices.	4	25	100
118(c); 225(b)	Within 15 days of bid rejection, request reconsideration of bid decision or rejection.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			74 responses	19,179 hours
			$2,866,000 non-hour costs	
Subpart B—Issuance of OCS Renewable Energy Leases				
200; 224; 231; 235; 236; 238.	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 585.			0

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
210; 211(a–c); 212 thru 216.	Submit nominations and general comments in response to **Federal Register** notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and Notices of Sale. Includes industry, State & local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
210; 211(a–c); 212 thru 216.	Submit comments and required information in response to **Federal Register** notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and Notices of Sale. Includes industry, State & local governments.	4	30 comments	120
211(d); 216; 220 thru 223; 231(c)(2).	Submit bid, payments, and required information in response to **Federal Register** Final Sale Notice.	5	12 bids	60
224	Within 10 business days, execute 3 copies of lease form and return to BOEM with required payments, including evidence that agent is authorized to act for bidder; if applicable, submit information to support delay in execution—competitive leases.	1	5 lease executions	5
230; 231(a)	Submit unsolicited request and acquisition fee for a commercial or limited lease.	5	5 unsolicited requests	25
231(b)	Submit comments in response to **Federal Register** notice re interest of unsolicited request for a lease.	4	4 comments	16
231(g)	Within 10 business days of receiving lease documents, execute lease; file financial assurance and supporting documentation—noncompetitive leases.	2	5 leases	10
231(g)	Within 45 days of receiving lease copies, submit rent and rent information.	Burdens covered by information collections approved for ONRR 30 CFR Chapter XII.		0
235(b); 236(b)	Request additional time to extend preliminary or site assessment term of commercial or limited lease, including revised schedule for SAP, COP, or GAP submission.	1	5	5
237(b)	Request lease be dated and effective 1st day of month in which signed.	1	1 request	1
238	Submit project plans	Burden covered under SAPs & GAPs § 585.600(a), (c).		0
Subtotal			67 responses	242 hours
Subpart C—ROW Grants and RUE Grants for Renewable Energy Activities				
306; 309; 315; 316	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 585.			0
302(a); 305; 306	Submit copies of a request for a new or modified ROW or RUE and required information, including qualifications to hold a grant, in format specified.	5	1 ROW/RUE request	5
307; 308(a)(1)	Submit information in response to **Federal Register** notice of proposed ROW or RUE grant area or comments on notice of grant auction.	4	2 comments	8
308(a)(2), (b); 315; 316.	Submit bid and payments in response to **Federal Register** notice of auction for a ROW or RUE grant.	5	1 bid	5
309	Submit decision to accept or reject terms and conditions of noncompetitive ROW or RUE grant.	2	1 grant decision	2
Subtotal			5 responses	20 hours

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
Subpart D—Lease and Grant Administration				
400; 401; 402; 405; 409; 416, 433.	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 585.			0
401(b)	Take measures directed by BOEM in cessation order and submit reports in order to resume activities.	100	1 cessation measures report.	100
405(d)	Submit written notice of change of address	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
405(e); Form BOEM–0006.	If designated operator (DO) changes, notify BOEM and identify new DO for BOEM approval.	1	1 new DO notice	1
408 thru 411; Forms BOEM–0002 and BOEM–0003.	Within 90 days after last party executes a transfer agreement, submit copies of a lease or grant assignment application, including originals of each instrument creating or transferring ownership of record title, eligibility and other qualifications; and evidence that agent is authorized to execute assignment, in format specified.	1 (30 minutes per form × 2 forms = 1 hour).	2 assignment requests/instruments submissions.	2
415(a)(1); 416; 420(a), (b); 428(b).	Submit request for suspension and required information/payment no later than 90 days prior to lease or grant expiration.	10	2 suspension requests	20
417(b)	Conduct, and if required pay for, site-specific study to evaluate cause of harm or damage; and submit copies of study and results, in format specified.	100	1 study/submission	100
		1 study × $950,000 = $950,000		
425 thru 428; 652(a); 235(a), (c).	Request lease or grant renewal no later than 180 days before termination date of your limited lease or grant, or no later than 2 years before termination date of operations term of commercial lease. Submit required information.	6	2 renewal requests	12
435; 658(c)(2); **Form BOEM–0004**.	Submit copies of application to relinquish lease or grant, in format specified.	1	2 relinquishments	2
436; 437	Provide information for reconsideration of BOEM decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			11 responses	237 hours
			$950,000	
Subpart E—Payments and Financial Assurance Requirements				
An * indicates the primary cites for providing bonds or other financial assurance, and the burdens include any previous or subsequent references throughout part 585 to furnish, replace, or provide additional bonds, securities, or financial assurance (including riders, cancellations, replacements). This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585. In the future BOEM may require electronic filings of certain submissions.				0
500 thru 509; 1011	Submit payor information, payments and payment information, and maintain auditable records according to ONRR regulations or guidance.	Burdens covered by information collections approved for ONRR 30 CFR Chapter XII.		0
506(c)(4)	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease—use same form as authorized by the EIA. (Burden covered under DOE/EIA OMB Control Number 1905–0129 to gather info and fill out form. BOEM's burden is for submitting a copy).	10 min	6 forms	1

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
510; 506(c)(3)	Submit application and required information for waiver or reduction of rental or other payment.	1	1 waiver or rental reduction.	1
* 515; 516; 525(a) thru (f).	Execute and provide $100,000 minimum lease-specific bond or other approved security; or increase bond level if required.	1	6 base-level lease bonds or other security.	6
* 516(a)(2), (3), (b), (c); 517; 525(a) thru (f).	Execute and provide commercial lease supplemental bonds in amounts determined by BOEM.	1	5 SAP and COP bonds	5
516(a)(4); 521(c)	Execute and provide decommissioning bond or other financial assurance; schedule for providing the appropriate amount.	1	3 decommissioning bonds	3
517(c)(1)	Submit comments on proposed adjustment to bond amounts.	1	3 adjustment comments	3
517(c)(2)	Request bond reduction and submit evidence to justify.	5	2 reduction requests	10
* 520; 521; 525(a) thru (f); **Form BOEM–0005**.	Execute and provide $300,000 minimum limited lease or grant-specific bond or increase financial assurance and required iniformation.	1	1 base-level ROW/RUE bond.	1
525(g)	Surety notice to lessee or ROW/RUE grant holder and BOEM within 5 business days after initiating insolvency or bankruptcy proceeding, or Treasury decertifies surety.	1	1 surety notice	1
* 526 **Form BOEM–0005**.	In lieu of surety bond, pledge other types of securities, including authority for BOEM to sell and use proceeds and submit required information (1 hour for form).	2	1 other security pledge	2
526(c)	Provide annual certified statements describing the nature and market value, including brokerage firm statements/reports.	1	1 statement	1
* 527; 531	Demonstrate financial worth/ability to carry out present and future financial obligations, annual updates, and related or subsequent actions/records/reports, etc.	10	1	10
528	Provide third-party indemnity; financial information/statements; additional bond info; executed guarantor agreement and supporting information/documentation/agreements.	10	1	10
528(c)(6); 532(b)	Guarantor/Surety requests BOEM terminate period of liability and notifies lessee or ROW/RUE grant holder, etc.	1	1 request	1
* 529	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2	1 decommissioning account.	2
530	Notify BOEM promptly of lapse in bond or other security/action filed alleging lessee, surety or guarantor et al is insolvent or bankrupt.	1	1 notice	1
533(a)(2)(ii), (iii)	Provide agreement from surety issuing new bond to assume all or portion of outstanding liabilities.	3	1 surety agreement	3
536(b)	Within 10 business days following BOEM notice, lessee, grant holder, or surety agrees to and demonstrates to BOEM that lease will be brought into compliance.	16	1 agreement demonstration every 2 years.	8
Subtotal			37 responses	69 hours
Subpart F—Plans and Information Requirements				
Two ** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 585 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585.				0

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
** 600(a); 601(a), (b); 605 thru 614; 238; 810.	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of SAP, including required information to assist BOEM to comply with NEPA/CZMA such as hazard info, air quality, SEMS, and all required information, certifications, requests, etc., in format specified.	240	6 SAPs	1,440
** 600(b); 601(c), (d)(1); 606(b); 618; 620 thru 629; 632; 633; 810.	If requesting an operations term for commercial lease, within time specified before the end of site assessment term, submit copies of COP, or FERC license application, including required information to assist BOEM to comply with NEPA/CZMA such as hazard info, air quality, SEMS, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, requests, etc., in format specified.	1,000	3 COPs	3,000
** 600(c); 601(a), (b); 640 thru 648; 651; 238; 810.	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of GAP, including required information to assist BOEM to comply with NEPA/CZMA such as hazard info, air quality, SEMS, and all required information, surveys and reports, certifications, project easements, requests, etc., in format specified.	240	1 GAP	240
** 601(d)(2); 622; 628(f); 632; 634; 658(c)(3); 907.	Submit revised or modified COPs, including project easements, and all required additional information.	50	1 revised or modified COP	50
602 [2]	Until BOEM releases financial assurance, respondents must maintain, and provide to BOEM if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.	2	9 records maintenance/submissions.	18
** 613(a), (d), (e); 617	Submit revised or modified SAPs and required additional information.	50	1 revised or modified SAP	50
612; 647	Submit copy of SAP or GAP consistency certification and supporting documentation, including noncompetitive leases.	1	4 leases	4
615(a)	Notify BOEM in writing within 30 days of completion of construction and installation activities under SAP.	1	5 completion construction notices.	5
615(b)	Submit annual report summarizing findings from site assessment activities.	30	8 annual reports	240
615(c)	Submit annual, or at other time periods as BOEM determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40	8 compliance certifications	320
617(a)	Notify BOEM in writing before conducting any activities not approved, or provided for, in SAP; provide additional information if requested.	10	1 notice before activity	10
627(c)	Submit oil spill response plan as required by BSEE 30 CFR part 254.	Burden covered under BSEE 1014–0007		0
631	Request deviation from approved COP schedule.	2	1 deviation request	2
633(b)	Submit annual, or at other time periods as BOEM determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	50	9 compliance certifications	450

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
634(a)	Notify BOEM in writing before conducting any activities not approved or provided for in COP, and provide additional information if requested.	10	1 notice before activity	10
635	Notify BOEM any time commercial operations cease without an approved suspension.	1	1 termination notice	1
636(a)	Notify BOEM in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1	3 commence notices	3
636(b)	Notify BOEM in writing no later than 30 days after completion of construction and installation activities.	1	3 completion notices	3
636(c)	Notify BOEM in writing at least 7 days before commencing commercial operations.	1	3 initial ops notices	3
** 642(b); 648; 655; 658(c)(3).	Submit revised or modified GAPs and required additional information.	50	1 revised or modified GAP	50
651	Before beginning construction of OCS facility described in GAP, complete survey activities identified in GAP and submit initial findings. [This only includes the time involved in submitting the findings; it does not include the survey time as these surveys would be conducted as good business practice.]	30	5 surveys/reports	150
653(a)	Notify BOEM in writing within 30 days of completing installation activities under the GAP.	1	5 completion notices	5
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30	8 annual reports	240
653(c)	Submit annual, or at other time periods as BOEM determines, GAP compliance certification, recommendations, reports, etc.	40	8 compliance certifications	320
655(a)	Notify BOEM in writing before conducting any activities not approved or provided for in GAP, and provide additional information if requested.	10	1 notice before activity	10
656	Notify BOEM any time approved GAP activities cease without an approved suspension.	1	1 termination notice	1
658(c)(1)	If after construction, cable or pipeline deviate from approved COP or GAP, notify affected lease operators and ROW/RUE grant holders of deviation and provide BOEM evidence of such notices.	3	1 deviation notice/BOEM evidence.	3
659	Determine appropriate air quality modeling protocol, conduct air quality modeling, and submit 3 copies of air quality modeling report and 3 sets of digital files as supporting information to plans.	70	10 air quality modeling reports/information.	700
Subtotal			108 responses	7,328 hours

Subpart G—Facility Design, Fabrication, and Installation

Three *** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 585 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585.				0
***700(a)(1), (b), (c); 701.	Submit Facility Design Report, including copies of the cover letter, certification statement, and all required information (1–3 paper or electronic copies as specified).	200	3 Facility Design Reports	600
***700(a)(2); (b), (c); 702.	Submit copies of a Fabrication and Installation Report, certification statement and all required information, in format specified.	160	3 Fabrication & Installation Reports.	480

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
705(a)(3); 707; 712	Certified Verification Agent (CVA) conducts independent assessment of the facility design and submits copies of all reports/certifications to lessee or grant holder and BOEM—interim reports if required, in format specified.	100	3 CVA design interim reports.	300
		100	3 CVA final reports	300
705(a)(3); 708; 709; 710; 712.	CVA conducts independent assessments/inspections on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified; and submits copies of all reports/certifications to lessee or grant holder and BOEM—interim reports if required, in format specified.	100	3 CVA interim reports	300
		100	3 CVA final reports	300
703***; 705(a)(3); 712; 815.	CVA/project engineer monitors major project modifications and repairs and submits copies of all reports/certifications to lessee or grant holder and BOEM—interim reports if required, in format specified.	20	1 interim report	20
		15	1 final report	15
705(c)	Request waiver of CVA requirement in writing; lessee must demonstrate standard design and best practices.	40	1 waiver	40
706	Submit for approval with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination, and required information.	16	13 new CVA nominations	208
708(b)(2)	Lessee or grant holder notify BOEM if modifications identified by CVA/project engineer are accepted.	1	1 notice	1
709(a)(14); 710(a)(2), (e) [2].	Make fabrication quality control, installation towing, and other records available to CVA/project engineer for review (retention required by § 585.714).	1	3 records retention	3
713	Notify BOEM within 10 business days after commencing commercial operations.	1	2 commence notices	2
714 [2]	Until BOEM releases financial assurance, compile, retain, and make available to BOEM and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.	100	3 lessees	300
Subtotal			43 responses	2,869 hours
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs				
801(c), (d)	Notify BOEM if endangered or threatened species, or their designated critical habitat, may be in the vicinity of the lease or grant or may be affected by lease or grant activities.	1	2 notices	2
801(e), (f)	Submit information to ensure proposed activities will be conducted in compliance with the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA); including agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of endangered species or critical habitat.	6	2 ESA/MMPA submissions	12

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
802; 902(e)	Notify BOEM of archaeological resource within 72 hours of discovery.	3	1 archaeological notice	3
802(b), (c)	If requested, conduct further archaeological investigations and submit report/information.	10	1 archaeological report	10
802(d)	If applicable, submit payment for BOEM costs in carrying out National Historic Preservation Act responsibilities.	.5	1 payment	.5
803	If required, conduct additional surveys to define boundaries and avoidance distances and submit report.	15	2 survey/report	30
810***; 614; 627; 632(b); 651.	Submit safety management system description with the SAP, COP, or GAP.	35	10 safety management systems.	350
813(b)(1)	Report within 24 hours when any required equipment taken out of service for more than 12 hours; provide written confirmation if reported orally.	.5	3 equipment reports	1.5
		1	1 written confirmation	1
813(b)(3)	Notify BOEM when equipment returned to service; provide written confirmation if reported orally.	.5	3 return to service notices	1.5
815(c)	When required, analyze cable, P/L, or facility damage or failures to determine cause and as soon as available submit comprehensive written report.	1.5	1 analysis report	1.5
816	Submit plan of corrective action report on observed detrimental effects on cable, P/L, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2	1 corrective action plan and report.	2
822(a)(2)(iii), (b)	Until BOEM releases financial assurance, maintain records of design, construction, operation, maintenance, repairs, and investigation on or related to lease or ROW/RUE area; make available to BOEM for inspection.	1	4 records retention	4
823	Request reimbursement within 90 days for food, quarters, and transportation provided to BOEM reps during inspection.	2	1 reimbursement request	2
824(a) [2]	Develop annual self inspection plan covering all facilities; retain with records, and make available to BOEM upon request.	24	4 self assessment plans	96
824(b)	Conduct annual self inspection and submit report by November 1.	36	4 annual reports	144
825	Based on API RP 2A–WSD, perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to BOEM upon request.	60	4 assessments and mitigation actions.	240
830(a), (c); 831 thru 833.	Immediately report incidents to BOEM via oral communications, submit written follow-up report within 15 business days after the incident, and submit any required additional information.	Oral .5	6 incidents	3
		Written 4	1 incident	4
830(d)	Report oil spills as required by BSEE 30 CFR 254.	Burden covered under BSEE 1014–0007.		0
Subtotal			52 responses	908 hours

Subpart I—Decommissioning

Four **** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 585 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585.

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
**** 902; 905, 906; 907; 908(c); 909.	Submit for approval, in format specified, copies of the SAP, COP, or GAP decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities, or 90 days after cancellation, relinquishment, or other termination of lease or grant. Include documentation of coordination efforts w/States/CZMA agencies, local or tribal governments, requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information/evidence requested or modify and resubmit application.	20	1 decommissioning application.	20
902(d); 908;	Notify BOEM at least 60 days before commencing decommissioning activities.	1	1 decommissioning notice	1
910	Within 60 days after removing a facility, verify to BOEM that site is cleared.	1	1 removal verification	1
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report.	8	1 removal report	8
BOEM does not anticipate decommissioning activities for at least 5 years so the requirements have been given a minimal burden.				
Subtotal			4 responses	30 hours
Subpart J—RUEs for Energy- and Marine-Related Activities Using Existing OCS Facilities				
1004, 1005, 1006	Contact owner of existing facility and/or lessee of the area to reach preliminary agreement to use facility and obtain concurring signatures; submit request to BOEM for an alternative use RUE, including all required information/modifications.	1	1 request for RUE to use existing facility.	1
1007(a), (b), (c)	Submit indication of competitive interest in response to **Federal Register** notice.	4	1 response	4
1007(c)	Submit description of proposed activities and required information in response to **Federal Register** notice of competitive offering.	5	1 submission	5
1007(f)	Lessee or owner of facility submits decision to accept or reject proposals deemed acceptable by BOEM.	1	1 decision	1
1010(c)	Request renewal of Alternate Use RUE	6	1 renewal request	6
1012; 1016(b)	Provide financial assurance as BOEM determines in approving RUE for an existing facility, including additional security if required.	1	1 bond or other security	1
1013	Submit request for assignment of an alternative use RUE for an existing facility, including all required information.	1	1 RUE assignment request.	1
1015	Request relinquishment of RUE for an existing facility.	1	1 RUE relinquish	1
Subtotal			8 responses	20 hours
			409 Responses	30,902 Hours
Total Burden			$3,816,000 Non-Hour Cost Burdens	

[1] In the future, BOEM may require electronic filing of certain submissions.
[2] Retention of these records is usual and customary business practice; the burden is primarily to make them available to BOEM and CVAs.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: The estimated non-hour cost burdens total $3,816,000. The non-hour cost burdens consist of service fees for BOEM document/study preparation, costs for paying a contractor instead of BOEM, and costs for a site-specific study and report to evaluate the cause of harm to natural resources.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on October 10, 2012, BOEM published a **Federal Register** notice (77 FR 61633) announcing that we would submit this ICR to OMB for approval. This notice provided the required 60-day comment period. We received one comment. The Marine Mammal Commission states that BOEM's reporting requirements provide a systematic and uniform method to track compliance with regulations, including those that protect marine resources. Therefore, the Commission supports BOEM's request to OMB to approve the renewal of this collection.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated:February 7, 2013.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2013–04626 Filed 2–27–13; 8:45 am]

BILLING CODE 4510–MR–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Board

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to Serve as Members of Performance Review Board.

DATES: *Effective Date:* February 22, 2013.

SUMMARY: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chair of the PRB: Commissioner Daniel R. Pearson
Vice-Chair of the PRB: Commissioner Dean A. Pinkert
Member—Catherine DeFilippo
Member—Robert B. Koopman
Member—Karen Laney
Member—Bill Dobryzkowski
Member—Andrew Martin
Member—Stephen A. McLaughlin
Member—Lyn M Schlitt

FOR FURTHER INFORMATION CONTACT: Patricia Connelly, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

Authority: This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chairman.

Issued: February 22, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–04557 Filed 2–27–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Public Availability of FY 2011 Service Contract Inventory Analysis, FY 2012 Service Contract Inventory, and FY 2012 Service Contract Inventory Planned Analysis for the U.S. International Trade Commission

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the United States International Trade Commission is publishing this notice to advise the public of the availability of the FY 2011 Service Contract Inventory Analysis, the FY 2012 Service Contract Inventory, and the FY 2012 Service Contract Inventory Planned Analysis. The FY 2011 inventory analysis provides information on specific service contract actions that were analyzed as part of the FY 2011 inventory. The FY 2012 inventory provides information on service contract actions over $25,000 that were made in FY 2012. The inventory information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The FY 2012 inventory planned analysis provides information on which functional areas will be reviewed by the agency. The United States International Trade Commission has posted its FY 2012 inventory, FY 2012 planned analysis, and FY 2011 inventory analysis at the following link: *http://www.usitc.gov/procurement/.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Celeste Rueffert, Office of Procurement, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, at (202) 205–2252 or *celeste.rueffert@usitc.gov.*

By order of the Commission.

Issued: February 22, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–04558 Filed 2–27–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Modified Consent Decree Under the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on February 22, 2013, a Second Modified Consent Decree in *United States and League of Women Voters of New Orleans, et al.* v. *Sewerage and Water Board of New Orleans, et al.,* C.A. No. 2:93–cv–03212–MVL (E.D. La.), was lodged with the United States District Court for the Eastern District of Louisiana. The Sewerage and Water Board of New Orleans (''Board'') is currently implementing the Modified Consent Decree, which was approved by the Court on March 23, 2010. The Modified Consent Decree incorporates comprehensive remedial measures designed to address, prevent, and eliminate unauthorized discharges from the East Bank collection system. The Second Modified Consent Decree extends certain dates in the Modified Consent Decree for completing remedial work in two basins. Specifically, the Second Modified Consent Decree extends the dates for completing remedial work at the Ninth Ward basin from March 31, 2013 to March 31, 2018

and at the New Orleans East basin from October 31, 2013 to October 31, 2019. The parties have agreed to extend the dates due to continuing effects of Hurricane Katrina, including logistical, engineering and financial, that prevent the Board from timely completing remedial work at the two above-mentioned basins under the completion dates set forth in the Modified Consent Decree.

The Department of Justice will receive comments relating to the proposed Second Modified Consent Decree for a period of thirty (30) days from the date of this publication. 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 *United States and League of Women Voters of New Orleans, et al.* v. *Sewerage and Water Board of New Orleans, et al.,* Department of Justice No. 90–5–1–1–4032.

During the comment period, the proposed Second Modified Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj/enrd/Consent_Decrees.html.* A copy of the Second Modified Consent Decree may also be obtained 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. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $15.00 (25 cents per page production cost) for the Consent Decree without exhibits as listed on page iv. Several of the exhibits are voluminous and the same cost (25 cents per page) will apply. If one or more of the exhibits are requested, fax or email the request to ''Consent Decree Copy'' as indicated above and provide the requester's contact information to receive the cost of the requested exhibits. Make checks payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–04624 Filed 2–27–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Jerrel Dungy and Long Prairie Farm, LLC,* Civil Action No. 3:13–cv–00174–MJR–PMF, was lodged with the United States District Court for the Southern District of Illinois on February 21, 2013.

This proposed Consent Decree concerns a complaint filed by the United States against Jerrel Dungy and Long Prairie Farm, LLC, pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and to pay a civil penalty. The proposed Consent Decree also provides for the Defendants to perform a supplemental environmental project.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Alan D. Greenberg, Senior Attorney, United States Department of Justice, Environment and Natural Resources Division, 999 18th Street, Suite 370—South Terrace, Denver, CO 80202, and refer to *United States of America* v. *Jerrel Dungy and Long Prairie Farm, LLC,* DJ # 90–5–1–1–19534.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Illinois, 301 West Main Street, Benton, IL 62812. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2013–04630 Filed 2–27–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0008]

The Benzene Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Benzene Standard (29 CFR 1910.1028).

DATES: Comments must be submitted (postmarked, sent, or received) by April 29, 2013.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0008, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (*hand, express mail, messenger, and courier service*) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2013–0008) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the

docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Benzene Standard protect workers from the adverse health effects that may result from occupational exposure to benzene. The major information collection requirements in the Standard include conducting worker exposure monitoring, notifying workers of the benzene exposure, implementing a written compliance program, implementing medical surveillance for workers, providing examining physicians with specific information, ensuring that workers receive a copy of their medical surveillance records, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the worker who is the subject of the records, the worker's representative, and other designated parties.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting that it retain its current burden hour estimate of 126,183. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: Benzene Standard (29 CFR 1910.1028).

OMB Control Number: 1218–0129.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 13,498.

Total Responses: 267,385.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) for employers to maintain records to 4 hours for workers to receive referral medical exams.

Estimated Total Burden Hours: 126,183.

Estimated Cost (Operation and Maintenance): $11,210,150.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2013–0008). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 22, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–04650 Filed 2–27–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0006]

Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of special meeting of the ACCSH.

SUMMARY: The ACCSH will hold a special meeting March 18, 2013, in Washington, DC, to consider a proposed rule to update OSHA's standard on Accident Prevention Signs and Tags in construction and proposed technical amendments and corrections to the Cranes and Derricks standards.

DATES:

ACCSH meeting: The ACCSH will meet from 1 to 4:00 p.m., Monday, March 18, 2013.

Written comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to address the ACCSH meeting, speaker presentations (written or electronic), and requests for special accommodations for the ACCSH meeting by March 8, 2013.

ADDRESSES:

Special ACCSH meeting: The ACCSH will meet in Room N–3437 A–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the ACCSH meeting, and speaker presentations, which you must identify by agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2013–0006), using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (Fax): If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2013–0006, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TTY (877) 889–5627). The Department of Labor and OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger (courier) service) during normal business hours, 8:15 a.m.–4:45 p.m., e.t., weekdays.

Requests for special accommodations: Please submit your request for special accommodations to attend the ACCSH meeting to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *chatmon.veneta@dol.gov.*

Instructions: Your submission must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2013–0006). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information you provide, without change, at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about the special ACCSH meeting: Mr. Damon Bonneau, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; email: *bonneau.damon@dol.gov.*

SUPPLEMENTARY INFORMATION:

ACCSH Special Meeting

The ACCSH will hold a special meeting March 18, 2013, in Washington, DC. Some ACCSH members will attend the meeting by teleconference. The meeting is open to the public.

The ACCSH advises the Secretary of Labor and Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*). See also 29 CFR 1911.10 and 1912.3. The OSH Act and CSA also require that OSHA consult with ACCSH before the Agency proposes an occupational safety and health standard affecting construction activities.

The purpose of this special meeting is to present the following actions to the ACCSH for their consideration:

- Proposed rule to update OSHA's standard on Accident Prevention Signs and Tags in construction (29 CFR 1926.200). The proposed rule updates the American National Standards Institute consensus standards referenced in § 1926.200; and
- Proposed technical amendments and corrections OSHA's Cranes and Derricks standards (29 CFR part 1926, subpart CC).

Public Participation, Submissions, and Access to Public Docket

ACCSH special meeting: The special ACCSH meeting is open to the public. Individuals attending the special ACCSH meeting must enter the Department of Labor at the visitors' entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures for attending the special meeting, please contact Ms. Chatmon (see **ADDRESSES** section). Please submit your request for special accommodations to attend the special meeting of the ACCSH to Ms. Chatmon.

Submission of comments: You may submit comments using one of the methods listed in the **ADDRESSES** section. Your submissions must include the agency name and docket number for this ACCSH meeting (Docket No. OSHA–2013–0006). OSHA will provide copies of submissions to ACCSH members.

Because of security-related procedures, submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand

delivery, express mail, and messenger (courier) service, contact the OSHA Docket Office (see **ADDRESSES** section).

Requests to speak: If you want to address the ACCSH at the meeting you must submit your request to speak, by March 8, 2013, using one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time requested to speak;
- The interest you represent (e.g., business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2003 and other Microsoft Office 2003 formats.

The ACCSH Chair may grant requests to address the ACCSH as time and circumstances permit.

Public docket of the ACCSH meeting: OSHA transcribes the ACCSH meetings and prepares detailed minutes of meetings. OSHA places the transcript, minutes, and other materials submitted to the ACCSH in the public docket for the meeting. This includes putting comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this ACCSH meeting without change. Those documents may be available online at *http://www.regulations.gov;* therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

Access to the public record of ACCSH meetings: To read or download documents in the public docket of this ACCSH meeting, go to Docket No. OSHA–2013–0006 at *http://www.regulations.gov.* All documents in the public record for this meeting are listed in the *http://www.regulations.gov* index; however, some documents (e.g., copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Please contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 656, 40 U.S.C. 3704, 5 U.S.C. App. 2, 29 CFR parts 1911 and 1912, 41 CFR part 102, and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 21, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–04482 Filed 2–27–13; 8:45 am]

BILLING CODE 4510–26–P

MARINE MAMMAL COMMISSION

Sunshine Act Meetings

TIME AND DATE: The Marine Mammal Commission will meet in open session on Tuesday, 12 March 2013, in Seattle, Washington, from 9:00 a.m. to 5:00 p.m., and on Tuesday, 26 March 2013, in Honolulu, Hawaii, from 9:00 a.m. to 5:00 p.m.

PLACE: The meeting on Tuesday, 12 March 2013, will be held in the Traynor Room (Room 2076) in Building 4 at the National Oceanic and Atmospheric Administration's Western Regional Center, 7600 Sand Point Way NE., Seattle, Washington, 98115. The meeting on Tuesday, 26 March 2013, will be held in the 11th Floor Conference Room at the National Marine Fisheries Service's Pacific Islands Regional Office, Suite 1110, 1601 Kapiolani Boulevard, Honolulu, Hawaii, 96814.

STATUS: The Commission expects that all portions of these meetings will be open to the public. It will allow public participation as time permits and as determined to be desirable by the Chairman. Should it be determined that it is appropriate to close a portion of either meeting to the public, any such closure will be carried out in accordance with applicable regulations (50 CFR 560.5 and 560.6).

Seating for members of the public at these meetings may be limited. The Commission therefore asks that those intending to attend either meeting advise it in advance by sending an email to the Commission at *mmc@mmc.gov* or by calling (301) 504–0087. Members of the public will need to present valid, government-issued photo identification to enter the buildings where the meetings will be held.

MATTERS TO BE CONSIDERED: The Commission plans to meet with regional management and scientific officials in each of the National Marine Fisheries Service's six regions to identify the most pressing marine mammal research and management needs. The Commission will use these meetings to develop a set of national priorities for guiding federal conservation efforts for marine mammals. Members of the public are invited to attend these meetings and to provide comments concerning priority issues. Those unable to attend any of the meetings may submit comments in writing. Written comments should be sent to Timothy J. Ragen, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, Maryland 20814.

The Commission already has met with officials in the National Marine Fisheries Service's four other regions. The fifth and sixth meetings will be held in the National Marine Fisheries Service's Northwest and Pacific Islands Regions. The Commission also may meet with staff at the National Marine Fisheries Service's Headquarter in Silver Spring, Maryland as part of its review of marine mammal research and management needs. If so, a notice of that meeting will be published in the **Federal Register** and posted on the Commission's Web site (*http://www.mmc.gov*) when the date and location are confirmed.

CONTACT PERSON FOR MORE INFORMATION: Timothy J. Ragen, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504–0087; email: *tragen@mmc.gov.*

Dated: February 26, 2013.

Michael L. Gosliner,

General Counsel.

[FR Doc. 2013–04848 Filed 2–26–13; 4:15 pm]

BILLING CODE 6820–31–P

NATIONAL LABOR RELATIONS BOARD

Analysis of FY 2011 Service Contract Inventories

AGENCY: National Labor Relations Board.

ACTION: Notice of analysis of FY 2011 Service Contract Inventories.

Background: The National Labor Relations Board (NLRB) is an independent Federal Agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between and among unions, employees, and employers in the private sector. The statute guarantees the right of

employees to organize and bargain collectively with their employers or to refrain from all such activity. Generally applying to all employers involved in interstate commerce other than airlines, railroads, agriculture, and government, the Act implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. Through the years, Congress has amended the Act and the Board and courts have developed a body of law drawn from the statute. The NLRB consists of 51 regional, sub-regional, and resident offices, and a headquarters office.

Scope: Pursuant to the December 19, 2011 Memorandum from the Office of Federal Procurement Policy (OFPP), Federal agencies are requested to conduct an analysis of special interest functions within the FY 2011 Service Contract Inventories submitted to the Office of Management and Budget (OMB) in accordance with Section 743 of Division C of the FY 2011 Consolidated Appropriations Act, Public Law 111–117. The NLRB hereby submits its analysis and findings.

Methodology: The NLRB performed an analysis of the special interest functions by pulling information on all FY 2011 service contracts over $25,000 from FPDS–NG with the special interest Product Service Codes (PSC) selected from the Service Contract Summary. We decided on a sample of three (3) contracts that are representative of the NLRB service contract inventory which we believe provides an illustrative representation of the overall inventory of special interest contracts. This sample provides information about one (1) service contract from each of the two (2) PSC categories that make up the FY2011 NLRB inventory. The contracts were analyzed by NLRB Contracting Officers by gathering information in cooperation with Contracting Officers Representative (COR) and Program Managers to determine whether the contract labor is used appropriately and efficiently and if the mix of Federal employees and contractors in the agency is effectively balanced. The analysis specifically addresses the desired outcomes in Section 743(e) of Division C of the FY 2011 Consolidated Appropriations Act, Public Law 111–117 to ensure that:

(A) Each contract in the inventory that is a personal services contract has been entered into, and is being performed, in accordance with applicable laws and regulations;

(B) The agency is giving special management attention to functions that are closely associated with inherently governmental functions;

(C) The agency is not using contractor employees to perform inherently governmental functions;

(D) The agency has specific safeguards and monitoring systems in place to ensure that work being performed by contractors has not changed or expanded during performance to become an inherently governmental function;

(E) The agency is not using contractor employees to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations; and

(F) There are sufficient internal agency resources to manage and oversee contracts effectively.

Observations and Findings: The NLRB inventory consists of service contracts from three (3) PSC Category codes. The codes are:

- R407 OCIO Advisory Services;
- R408 Enterprise IT Helpdesk Support Services; and
- R704 Agency Audit Services.

R407—The contract representing R407, obligated in the amount of $47,320, is for Office of Computer Information Officer (OCIO) Advisory Services, and is the only contract listed under the R407 PSC code. Discussions with the OCIO reveal that the contract continues to be well-managed by the contractor and meets the scope and intent of the requirement to provide advisement information to the OCIO, and adheres to all applicable laws and regulations. The contract is not a personal services contract. The agency is not using contractor employees to perform inherently governmental functions. The advisement information provided by the contractor is typically beyond the intrinsic duties and knowledge of the government and the OCIO continues to provide management attention to ensure any functions that could be closely associated with inherently governmental functions do not surface. The COR is the Chief Information Officer who ensures that the contract does not change or expand services to become inherently governmental, the OCIO is monitoring the work and systems in place. The contractor did not perform critical functions that would affect the ability of the agency to maintain control of its mission and operations and is never on site. The contractor advises the OCIO, on trends in the government and industry and control is maintained by the government by managing it closely and effectively at all times.

R408—The contract selected to represent PSC code R408 is the second largest contract in the largest PSC group of special interest service contracts obligated in the amount of $1,588,851. This contract provides Enterprise IT Helpdesk Support Services for the NLRB. The services provided under this contract are not inherently governmental and although the performance of the contract is important, contractors were not being used to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations. The NLRB has given special management attention to performance of this contract, but no functions are thought to be closely associated with being inherently governmental, nor has changed or expanded, during performance, to become inherently governmental. The contract is monitored closely by a COR, the Supervisory Information Technology Specialist who understands the contract requirement and manages it to remain within the scope of the requirement. In addition, there are several OCIO (government) employees working closely with this contract, so there are sufficient internal resources to administer and oversee the contract effectively. The contractor has performed well and adhered to all laws and regulations.

R704—The contract selected to represent PSC code R704 is for Audit Services from Carmichael, Brasher, Tuvell, and Company. This contract with a base year and four (4) one-year options totals $942,148. This contract was chosen as representative because it is also the only contract in this PSC category. This was a non-personal services contract that provided the NLRB with an independent financial audit. The contractor has performed well, and has adhered to laws and regulations, so there are no concerns about poor performance. The contract is not a personal services contract, nor was it ever inherently governmental, and has been monitored to ensure that no employees of the contractor were performing inherently governmental tasks or responsibilities. The agency is not using contractor employees to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations. The contract is monitored closely by a COR and other program staff, so there are sufficient internal resources dedicated to oversee the contract effectively.

SUMMARY: It has been determined that none of the service contractors within the special interest contracts have been considered to have performed poorly.

The costs of the contracts analyzed were not excessively priced and did not present excessive risks to the government. The NLRB takes pride in monitoring service contracts closely with full cooperation from Contracting Officers, CORs, and Program Staff and Managers. Based on this analysis, we believe we have a balanced mix of contractors to employees and have the resources necessary to continue monitoring contracts effectively and efficiently to reduce risks of personal or inherently governmental contracts. The NLRB is committed to identifying and addressing any new risks related to service contracts, and will meet the challenges with swift and evasive action.

FOR FURTHER INFORMATION CONTACT: Questions regarding the analysis of the FY 2011 service contract inventories should be directed to Doug Wolf in the Acquisitions Management Branch at 202–273–4218 or *doug.wolf@nlrb.gov.*

Dated: February 22, 2013.

By Direction of the Board.

William B. Cowen,

Solicitor.

[FR Doc. 2013–04556 Filed 2–27–13; 8:45 am]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0042]

U.S. Nuclear Regulatory Commission Planned Monitoring Activities for F-Area Tank Farm at the Savannah River Site, Revision 0

AGENCY: Nuclear Regulatory Commission.

ACTION: Document issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of ''U.S. Nuclear Regulatory Commission Plan for Monitoring Disposal Actions Taken by the U.S. Department of Energy at the Savannah River Site F-Area Tank Farm Facility in Accordance with the National Defense Authorization Act for Fiscal Year 2005, (NDAA)'' Revision 0, dated January 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0042 when contacting the NRC about availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0042. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *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 Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for the document is ML12212A192. The ADAMS Accession Number for the letter sending the document to the U.S. Department of Energy (DOE) is ML12345A318.
- *NRC's Public Document Room (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.

FOR FURTHER INFORMATION CONTACT: Harry Felsher, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6559; and email: *Harry.Felsher@nrc.gov*.

SUPPLEMENTARY INFORMATION: The document describes the NRC staff's planned activities in carrying out its responsibilities for monitoring DOE's waste disposal activities at the F-Area Tank Farm at the Savannah River Site, in accordance with the NDAA for Fiscal Year 2005. The NRC staff developed a Technical Evaluation Report (TER) for the F-Area Tank Farm Facility in October 2011, as part of the NRC consultation with DOE in its waste determination. In the TER, the NRC staff identified specific recommendations that if implemented by DOE, NRC staff believed would enhance DOE's demonstration of compliance with the performance objectives in 10 CFR Part 61, Subpart C. In the issued document, the NRC staff identified specific areas associated with those recommendations, as well as other areas, that it intends to monitor in assessing DOE's compliance with the performance objectives. The document describes what the NRC staff intends to do in each of those areas, as well as other activities that will be performed to allow a complete assessment of compliance with the performance objectives. In finalizing the document, the NRC staff considered comments and input from the State of South Carolina.

Dated at Rockville, Maryland, this 21st day of February 2013.

For the U.S. Nuclear Regulatory Commission.

Aby S. Mohseni,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–04668 Filed 2–27–13; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information under Part 4003 of its regulations relating to Administrative Appeals (OMB control number 1212–0061, expires April 30, 2013). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by April 1, 2013.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974. A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The request is also available at *http://www.reginfo.gov.* PBGC's regulation on Administrative Appeals may be accessed on PBGC's Web site at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General

Counsel, or Donald McCabe, Attorney, Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under ERISA section 4021 or employer liability under ERISA sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or email. For appeals of benefit determinations, PBGC has optional forms for filing appeals and requests for extensions of time to appeal.

OMB has approved the administrative appeals collection of information under control number 1212–0061 through April 30, 2013. PBGC is requesting that OMB extend its approval of this collection of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that an average of 900 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is about 45 minutes and $52 per appellant, with an average total annual burden of 643 hours and $46,680.

Issued in Washington, DC, this February 21, 2013.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–04671 Filed 2–27–13; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–41 and CP2013–53; Order No. 1666]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Express Mail Contract 14 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 1, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Express Mail Contract 14 to the competitive product list.[1] The Postal Service asserts that Express Mail Contract 14 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–41.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–53.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective the day following the day that the Commission issues all necessary regulatory approval. *Id.* at 4. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–41 and CP2013–53 to consider the Request pertaining to the proposed Express Mail Contract 14

[1] Request of the United States Postal Service to Add Express Mail Contract 14 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 21, 2013 (Request).

product and the related contract, respectively.

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 March 4, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lawrence E. Fenster to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–41 and CP2013–53 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lawrence E. Fenster is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments by interested persons in these proceedings are due no later than March 4, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–04612 Filed 2–27–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–40 and CP2013–52; Order No. 1665]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 55 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 4, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 55 to the competitive product list.[1] It asserts that Priority Mail Contract 55 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–40.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–52.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on March 12, 2013. *Id.* at 4. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

SUPPLEMENTARY INFORMATION: To clarify the record, the Postal Service is requested to provide written responses to the following questions. Answers should be provided to individual questions as soon as they are developed, but no later than March 1, 2013.

1. In the contract, the First Year Prices for the Second Quarter are based on the volume of the contract packages shipped during the previous quarter. The relevant provision references a chart ''outlined below.'' However, unlike the Third and Fourth Quarter Prices for the First Year, no chart is outlined in section I.G.2. Please clarify how the Second Quarter prices in the First Year will be determined. *See id.* Attachment B at 2.

2. In section VI of the contract, an exception to the parties' inability to amend the contract appears to have been intended. Please clarify what was intended by this exception. *See id.* at 4.

3. In the contract, the First Year Prices for the Third Quarter are based on the volume of the contract packages shipped during the First Quarter rather than the Second Quarter. *See id.* at 2. Does this language accurately reflect the intent of the parties? If not, should that provision be modified to change First Quarter to Second Quarter?

[1] Request of the United States Postal Service to Add Priority Mail Contract 55 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 21, 2013 (Request).

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–40 and CP2013–52 to consider the Request pertaining to the proposed Priority Mail Contract 55 product and the related contract, respectively.

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 March 4, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–40 and CP2013–52 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments by interested persons in these proceedings are due no later than March 4, 2013.
4. Responses by the Postal Service to the Commission's request for supplemental information are due no later than March 1, 2013.
5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–04611 Filed 2–27–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Express Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 21, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service To Add Express Mail Contract 14 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–41, CP2013–53.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–04602 Filed 2–27–13; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 21, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service To Add Priority Mail Contract 55 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–40, CP2013–52.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–04605 Filed 2–27–13; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68962; File No. SR–OCC–2013–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Clarifying Language To Conform Interpretive Guidance Concerning Options Overlying Fund Shares With OCC's By-Laws Governing Adjustments

February 21, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the rule change described in Items I, II and III below, which items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this Notice to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

OCC is providing clarifying language to conform interpretive guidance concerning options on fund shares with certain By-Law provisions that govern adjustments of contracts.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the rule change and discussed any comments it received on the rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] The Commission has modified the text of the summaries prepared by OCC.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to make a technical correction in Interpretation and Policy .08 to Article VI, Section 11A (''Interpretation and Policy .08'') that relates to OCC's amendment of Section 11A in connection with equity options that are originally listed with a unit of trading of 10 shares (''Mini Options''), which was previously approved by the Commission.[6] The correction to Interpretation and Policy .08 clarifies that the same adjustment treatment thresholds that were added to Article VI, Section 11A(c)(ii), by Commission approval of SR–OCC–2012–16 (''Mini Options Rule Change''), are also meant to extend to options contracts overlying fund shares.

Commission approval of SR–OCC–2012–16 amended Section 11A(c)(ii) to provide that it is the general rule that no adjustment will be made for a cash dividend or distribution by the issuer of the underlying security if such dividend or distribution is less than $.0125 per share, provided that if a contract is originally listed with a unit of trading larger than 100 shares the applicable threshold is $12.50 per contract. The rule change to Interpretation and Policy .08 specifically addresses the adjustment treatment of distributions on contracts overlying fund shares. Interpretation and Policy .08 currently does not expressly indicate that options on fund shares are subject to the same adjustment treatment thresholds that are set out in Article VI, Section 11A(c)(ii) as a result of the Mini Options Rule Change. The rule change clarifies that the adjustment thresholds are the same.

In connection with the Mini Options Rule Change, the Commission approved an amendment of the options disclosure document (''ODD''), Characteristics and Risks of Standardized Options, to reflect the adjustment thresholds specified in Article VI, Section 11A(c)(ii).[7] No further supplementation of the ODD is necessary since this rule change is consistent with those adjustment thresholds.

OCC believes that the rule change is consistent with Section 17A of the Act[8], and the rules and regulations thereunder, because the modifications clarify that the rules concerning adjustments of contracts overlying fund shares are meant to be consistent with the rules governing options on shares of common preferred stock. OCC believes that this clarification helps to ensure that the rules of OCC are designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and thereby promotes the prompt and accurate clearance and settlement of securities transactions.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe the rule change would 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

Written comments on the rule change were not and are not intended to be solicited and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[10] of the Act and Rule 19b–4(f)(1)[11] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of the 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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–OCC–2013–01 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–OCC–2013–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_01.pdf*.

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–OCC–2013–01 and should be submitted on or before March 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2013–04552 Filed 2–27–13; 8:45 am]

BILLING CODE 8011–01–P

[6] Securities Exchange Act Release No. 34–68104 (October 25, 2012); 77 FR 65917 (October 31, 2012) (SR–OCC–2012–16) (Securities and Exchange Commission Order Granting Accelerated Approval of Proposed Rule Change To Accommodate Equity Options That Have a Unit of Trading of 10 Shares).

[7] Securities Exchange Act Release No. 34–68368 (December 6, 2012); 77 FR 74043 (December 12, 2012) (SR–ODD–2012–02).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68971; File No. SR–ISE–2013–14]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To List Options on the Dow Jones FXCM Dollar Index

February 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules for the listing and trading on the Exchange of options on a foreign currency index, the Dow Jones FXCM Dollar Index. The Exchange also proposes to list and trade long-term options on the Dow Jones FXCM Dollar Index. Options on the Dow Jones FXCM Dollar Index will be settled in the same manner as the Exchange's foreign currency options and will have European-style exercise provisions. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of options on a foreign currency index, the Dow Jones FXCM Dollar Index (the ''Dollar Index''). Options on the Dollar Index will be settled in the same manner as the Exchange's foreign currency options (''FX Options'')[3] and will have European-style exercise provisions. The components that comprise the Dollar Index are a subset of the Exchange's FX Options. In addition to regular options, the Exchange propose to also list long-term options on the Dollar Index.

Index Design and Composition

The Dollar Index was designed and developed by Dow Jones Indexes, a unit of CME Group that creates indexes, and Forex Capital Markets LLC, an online foreign exchange brokerage firm. The Dollar Index is calculated and maintained by Dow Jones. The Dollar Index reflects U.S. dollar fluctuations against a basket of four of the most liquid currencies in the world: Euro, British pound, Japanese yen, and Australian dollar. More specifically, the Dollar Index's input data are individual currency pairs calculated based on the conventional quote format as follows:

Convention	Currency
EUR/USD	euro.
GBP/USD	British pound.
USD/JPY	Japanese yen.
AUD/USD	Australian dollar.

Spot currency quotes are derived from ThomsonReuters, the same source that the Exchange currently uses for the underlying values of its existing FX Options. Each input value is based on the mid-point between the bid and ask quotes. The Dollar Index has a base date of January 1, 2011 and a base value of 10000, using closing prices as of December 31, 2010. Spot quotes for each pair on the base date were as follows:

EUR/USD	1.3370
GBP/USD	1.5601
USD/JPY	81.21
AUD/USD	1.0218

On its base date, the Dollar Index was set to be equally-weighted such that each constituent currency pair has equal influence on the overall index value. Equal positions in U.S. dollar terms were calculated on the base date by assuming a $10,000 allocation to each currency pair as follows:

EUR/USD position in U.S. dollar terms	1.3370 × €7,479 = $10,000.
GBP/USD position in U.S. dollar terms	1.5601 × £6,410 = $10,000.
USD/JPY position in U.S. dollar terms	¥812,150 ÷ 81.21 = $10,000.
AUD/USD position in U.S. dollar terms	1.0218 × AU$9,787 = $10,000.

This method is similar to equally-weighted stock indexes that calculate the number of shares needed in order for each stock constituent to have an equal position.[4] The Dollar Index level is calculated in accordance with the following equation:

Dollar Index level = [($20,000 − ((EUR/USD) × (€ Position) + ($20,000 − ((GBP/USD) × (£ Position)) + ($20,000 − ((¥ Position) ÷ (USD/JPY)) + ($20,000 − ((AUD/USD) × (AU$ Position)]/Divisor

The Dollar Index is designed to reflect spot positions in each currency with the weighting of each currency set as equal at inception and rebalancing events. Rebalancing events are not scheduled. For example, the Dollar Index is rebalanced if the value of any position falls below $1,000 (*i.e.,* loses 90% of its original $10,000 position value).[5] At that point, each currency is again set to an equal position. This method of unscheduled rebalancing captures the prevalent strategy among currency traders with long-term exposure to the most actively traded currency pairs. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission previously approved the listing of FX Options on nineteen underlying foreign currencies. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[4] Equal-weighted indexes have become increasingly prevalent. For example, Standard & Poor's calculates an equal-weighted version of its S&P500 Index, and Nasdaq OMX calculates an equal-weighted version of its Nasdaq-100 Index. Additionally, ISE once listed options on the Morgan Stanley Technology Index, also an equal-weighted index of stocks in the technology sector.

[5] *See http://www.djindexes.com/mdsidx/downloads/fact_info/Dow_Jones_FXCM_Dollar_Index_Fact_Sheet.pdf.*

need for scheduled rebalancing is more important for stock indexes where the high volatility and idiosyncratic risk of individual stocks can cause a select few to dominate the index weighting. Unlike stocks, a portfolio of major currencies that are all paired against the US dollar does not have the same risks. The volatility of each currency pair is low which results in an even lower volatility for the overall index.

The components that comprise the Dollar Index include a subset of the modified exchange rates [6] previously approved by the Commission as the basis for FX Options. The Exchange represents that the total number of components in the Dollar Index may not decrease from the number of components in the Dollar Index at the time of its initial listing.

As set forth in Exhibit 3–1, following are the characteristics of the Dollar Index: (i) The total number of currency pairs is four; (ii) the total gross domestic product (GDP) of the associated countries of the four currency pairs is $33.83 trillion; (iii) regarding GDP of individual component countries, the United States is the highest at $15.04 trillion and Malta (one of the 17 participating member states of the euro) is the lowest at $0.01 trillion; (iv) regarding the recent exchange rates of the individual components, (a) EUR/USD is 1.3608, (b) USD/JPY is 91.8650, (c) GBP/USD is 1.5790, and (d) AUD/USD is 1.0409; [7] (v) regarding component weights, the Dollar Index is an equal-weighted index at inception and rebalancing; (vi) regarding average daily spot volume of the individual components, according to the Bank for International Settlements' Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in 2010,[8] (a) EUR/USD is $469 billion, (b) USD/JPY $183 billion, (c) GBP/USD is $140 billion, and (d) AUD/USD is $84 billion.

Index Calculation and Maintenance

As noted above, the Dollar Index will be maintained and calculated by Dow Jones. The level of the Dollar Index will reflect the current exchange rates of the four underlying currency pairs. The Dollar Index will be updated on a real-time basis beginning at 6:15 p.m. each day and ending at 5:00 p.m. (New York time) the following day from Sunday through Friday (the Dollar Index will basically be calculated for 22 hours and 45 minutes each day). If the value of a component's exchange rate is not available, the last known exchange rate will be used in the calculation.

Values of the Dollar Index will be disseminated every 15 seconds during the Exchange's regular trading hours to market information vendors such as Bloomberg and ThomsonReuters. In the event the Dollar Index ceases to be maintained or calculated, or its values are not disseminated every 15 seconds by a widely available source, the Exchange will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors. As part of this proposal, the Exchange is also making a clarifying change to ISE Rule 2003(b) by replacing the word 'stocks' with 'components' because index options listed by the Exchange are no longer limited to having stocks as their underlying components; with this proposed rule change, the Exchange will also list options on indexes that have currencies as their underlying components.

Exercise and Settlement Value

Options on the Dollar Index will expire on the Saturday following the third Friday of the expiration month. Trading in expiring options on the Dollar Index will normally cease at 12:00 p.m. (New York time) on the Friday preceding an expiration Saturday. The exercise and settlement value will be calculated using the WM Intra-day Spot rate corresponding to 12:00 p.m. New York time. The exercise-settlement amount is equal to the difference between the settlement value and the exercise price of the option, multiplied by $1. Exercise will result in the delivery of cash on the business day following expiration.

Contract Specifications

The contract specifications for options on the Dollar Index are set forth in Exhibit 3–2. The Dollar Index is a foreign currency index, as defined in proposed Rule 2001(h). Options on the Dollar Index are European-style and cash-settled.[9] The Exchange's standard trading hours for FX Options (7:30 a.m. to 4:15 p.m., New York time) will also apply to the Dollar Index. The Exchange proposes to apply margin requirements for the purchase and sale of options on the Dollar Index that are identical to those applied for individual FX Options. Accordingly, per proposed ISE Rule 1202(e), the margin level required for trading options on the Dollar Index shall be identical to the highest margin required for a component foreign currency as determined in accordance with ISE Rule 1202(d).

The trading of options on the Dollar Index will be subject to the trading halt procedures applicable to index options traded on the Exchange.[10] Options on the Dollar Index will be quoted and traded in U.S. dollars.[11] Accordingly, all Exchange and Options Clearing Corporation members shall be able to accommodate trading, clearance and settlement of the Dollar Index without alteration.

The Exchange proposes to list options on the Dollar Index that may expire at three-month (3) intervals or in consecutive months. The Exchange may also list up to six (6) expiration months at any one time. The Exchange proposes to set strike price intervals for options on the Dollar Index at minimum intervals of 2½ points, if the strike price is less than two hundred dollars ($200), in accordance with ISE Rule 2009(c)(1). Further, when new series of options on the Dollar Index with a new expiration date are opened for trading, or when additional series of options on the Dollar Index in an existing expiration date are opened for trading as the current value of the Dollar Index moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the underlying index at the time such series are first opened for trading.[12]

The Exchange may also open for trading additional series of the same class of options on the Dollar Index as the current value of the underlying index moves substantially from the exercise price of those options on the

[6] The term ''modified exchange rate'' means the price, for the sale of one foreign currency for another, quoted by various interbank foreign exchange participants, for immediate delivery (which generally means delivery two business days following the date on which the terms of such a sale are agreed upon), as reflected in the foreign currency price quotations reported by the foreign currency price quotation dissemination vendor selected by the Exchange, which is then modified by the Exchange with a modifier of 1, 10 or 100. *See* ISE Rule 2201(8).

[7] All exchange rates are as of February 1, 2013.

[8] The Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity is published every three (3) years; the most recent survey was published in December 2010.

[9] The Exchange will calculate a settlement value for the Index using the settlement values for the individual component currencies. As described earlier, the settlement value for each individual component currency is determined using the WM Intra-day Spot rate.

[10] *See* ISE Rule 2008(c).

[11] *See* ISE Rule 2009(a)(1).

[12] *See* ISE Rule 2009(c)(3). The term ''reasonably related to the current index value of the underlying index'' means that the exercise price is within thirty percent (30%) of the current index value, as defined in ISE Rule 2009(c)(4).

Dollar Index that already have been opened for trading on the Exchange. The exercise price of each series of options on the Dollar Index opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange. The Exchange may also open for trading additional series of options on the Dollar Index that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market makers trading for their own account shall not be considered when determining customer interest under this provision.[13]

The Exchange proposes to adopt the minimum tick size for options on the Dollar Index to be $0.01. Accordingly, the Exchange proposes to amend Supplementary Material .02 to ISE Rule 710 to permit options on the Dollar Index to be quoted and traded in one-cent increments. The Exchange believes that this trading increment will result in narrower spreads for options on the Dollar Index than if traditional trading increments are used because options on the individual foreign currency pairs that make up the Dollar Index are quoted in $0.01 increments.[14] The Exchange recognizes that allowing penny quoting increments for the Dollar Index represents an expansion of products with that feature. Nevertheless, permitting penny quoting in the Index is consistent with the Commission's prior approval of permitting penny quoting in the Exchange's FX Options. The Exchange believes that permitting the Dollar Index to be quoted and traded in one-cent increments will also promote adoption of trading FX-linked products on a listed and regulated market.

ISE further notes that the listing and trading of the Exchange's FX Options in penny increments was permitted in recognition of the immense liquidity in the spot FX markets, as well as the need for market makers in those products, which were new to the market at that time, to appropriately straddle theoretical options prices. In other words, market makers in FX Options could competitively quote the product more effectively if they could create bids and offers equidistant from theoretical prices. An artificially wide increment would have forced market makers to maintain larger spreads if the theoretical price was not coincidentally near the mid-point of the increment. Further, due to the relatively low volatility of currency pairs, quoting in penny increments allowed market makers to quote more aggressively than, say, for newly listed equity options.

The following example illustrates the issue regarding quotes and the theoretical price. Assume that the Dollar Index level is 10,040.00. Also assume that the traditional minimum quoting increments are in place. The at-the-money call options with 30 days until expiration and a theoretical price of $82.04, might be quoted as follows: Bid $81.95 and offered at $82.10. The market maker in the Dollar Index has little choice but to quote this series in such a way to ensure that the bid or offer is not the same as the theoretical price, but doing so results in the market maker setting its quote wider than it otherwise would. Due to the lower volatility exhibited by currency pairs, which is further muted by creating an index of currency pairs, the market maker may have been able to quote with a much smaller spread, resulting in a cost savings for investors. As a matter of reference, the historical annualized volatility for the four currency pairs comprising the Dollar Index is as follows: EURUSD volatility is 9.53%, GBPUSD volatility is 8.91%, USDJPY volatility is 9.67%, and AUDUSD volatility is 14.58%. The historical annualized volatility for the Dollar Index is 6.78%, which illustrates the effects of combining multiple components and the basic principle that an index cannot exhibit overall volatility greater than any one of its components. As a comparison, volatility in the SPY ETF over the same period is 21.22%, and in Apple Inc. is 31.37%.[15]

FX spot trading is available to investors of all sizes on web-based platforms that allow for significant leverage. Those products are not regulated in the same capacity as exchange-listed products, and do not benefit from clearinghouses that can mutualize risk across many participants. ISE endeavors to bring the full panoply of benefits afforded by an exchange listing, including investor safeguards, multi-dealer competitive pricing, central clearing, and innovative functionality. Considering that spot FX is quoted in the smallest increment possible for a currency pair, having an artificial restriction in quoting increments for options would only undermine the attractiveness of the listed product while providing no investor protection. Indeed, it would simply create an unlevel playing field between regulated exchange-listed products and less regulated over-the-counter products. Lastly, as noted above, considering that FX Options are currently quoted in penny increments, the Exchange believes that expanding quoting in penny increments to indexes solely comprised of currency pairs is a logical extension. There is no material impact, whether on industry participants or competitors, if penny quoting increments were permitted for the Dollar Index.

For options on the Dollar Index, the Exchange proposes to establish aggregate position limits at 600,000 contracts on the same side of the market, provided no more than 300,000 of such contracts are in the nearest expiration month series. The Exchange notes that the proposed positions limits for the Dollar Index are equal to or lower than the position limits for individual FX options on the four currency pairs comprising the Dollar Index.[16] The same limits that apply to position limits shall apply equally to exercise limits for options on the Dollar Index.[17]

The Exchange proposes to list options on the Dollar Index in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[18] The trading of options on the Dollar Index shall be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. In addition, long-term option series having up to sixty months to expiration may be traded.[19] The trading of long-term options on the Dollar Index shall also be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules. Further, pursuant to Supplementary Material .01 and .02 to ISE Rule 2009, the Exchange may also list Short Term Option Series and Quarterly Options Series, respectively, on the Dollar Index.

Chapter 6 of the Exchange's rules is designed to protect public customer

[13] *See* ISE Rule 2009(c)(4).

[14] *See* Securities Exchange Act Release No. 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007) (SR–ISE–2007–120).

[15] Volatility was measured using data from June 27, 2007 through January 10, 2013.

[16] *See* ISE Rule 2208.

[17] *See* ISE Rule 2007.

[18] *See* Rule 2009(a)(3).

[19] *See* Rule 2009(b)(1).

trading and shall apply to trading in options on the Dollar Index. Specifically, ISE Rules 608(a) and (b) prohibit Members from accepting a customer order to purchase or write an option, including options on the Dollar Index, unless such customer's account has been approved in writing by a designated Options Principal of the Member.[20] Additionally, ISE's Rule 610 regarding suitability is designed to ensure that options, including options on the Dollar Index, are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument. Further, ISE Rule 611 permits members to exercise discretionary power with respect to trading options, including options on the Dollar Index, in a customer's account only if the Member has received prior written authorization from the customer and the account had been accepted in writing by a designated Options Principal. ISE Rule 611 also requires designated Options Principals or Representatives of a Member to approve and initial each discretionary order, including discretionary orders for options on the Dollar Index, on the day the discretionary order is entered. Finally, ISE Rule 609, Supervision of Accounts, Rule 612, Confirmation to Customers, and Rule 616, Delivery of Current Options Disclosure Documents and Prospectus, will also apply to trading in options on the Dollar Index.

Finally, a trading license issued by the Exchange will be required for all market makers to effect transactions as a market maker in the Dollar Index in accordance with ISE Rule 2013.

Surveillance and Capacity

The Exchange has an adequate surveillance program in place for options traded on the Dollar Index, and intends to apply those same program procedures that it applies to the Exchange's other options products. Further, the ISE Market Surveillance Department conducts routine surveillance in approximately 30 discrete areas. Index products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. This is true for both surveillance system processing and manual processes that support the ISE's surveillance program. Additionally, the Exchange is also a member of the Intermarket Surveillance Group (ISG) under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: NYSE MKT LLC, NYSE Arca, Inc., BATS Exchange, Inc., NASDAQ OMX BX, Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, NASDAQ Stock Market LLC, National Stock Exchange, Inc., the New York Stock Exchange LLC, and NASDAQ OMX PHLX, Inc. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the CME Group and ICE Futures U.S., Inc. are also members of ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. The CME Group and ICE Futures U.S., Inc. operate a marketplace for trading of futures for all the component foreign currencies included in the Dollar Index. Further, CME Group operates a marketplace for trading options on futures for all the component foreign currencies included in the Dollar Index.

The Exchange represents that it has the necessary system capacity to support additional quotations and messages that will result from the listing and trading of options on the Dollar Index.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[21] in general, and furthers the objectives of Section 6(b)(5) of the Act[22] in particular in that it will permit options trading in the Dollar Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. In particular, the Exchange believes the proposed rule change will further the Exchange's goal of introducing new and innovative products to the marketplace. The Exchange believes that listing options on the Dollar Index will provide an opportunity for investors to hedge, or speculate on, the market risk associated with the foreign currencies underlying the Dollar Index.

The Exchange believes that because the Dollar Index is comprised of a basket of four of the most liquid currencies in the world, and given the immense liquidity found in the spot currency market and the average daily spot volume of the individual components, the concern that the Dollar Index will be subject to market manipulation is greatly reduced. Therefore, the Exchange believes that the proposed rule change to list options on the Dollar Index is appropriate.

The Exchange further notes that ISE Rules that apply to the trading of other index options currently traded on the Exchange would also apply to the trading of options on the Dollar Index. Additionally, the trading of options on the Dollar Index would be subject to, among others, Exchange Rules governing margin requirements and trading halt procedures. Also, the Exchange's proposed position limits for the Dollar Index are equal to or lower than the position limits for individual FX options on the four currency pairs comprising the Dollar Index, namely 600,000 contracts on the same side of the market for options on the Dollar Index. Further, delta-based hedge exemptions, in accordance with Rule 2006(d), will also apply to trading options on the Dollar Index.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in options on the Dollar Index. The Exchange also represents that it has the necessary systems capacity to support the new options series. And as stated in the filing, the Exchange has rules in place designed to protect public customer trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a novel index option product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[20] Pursuant to ISE Rule 602, Representatives of a Member may solicit or accept customer orders for options on the Dollar Index.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

(2) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–14 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–ISE–2013–14. 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–ISE–2013–14 and should be submitted on or before March 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04615 Filed 2–27–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68972; File No. SR–NASDAQ–2012–147]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the First Trust High Yield Long/Short ETF of First Trust Exchange-Traded Fund IV

February 22, 2013.

I. Introduction

On December 21, 2012, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares (''Shares'') of the First Trust High Yield Long/Short ETF (''Fund'') of First Trust Exchange-Traded Fund IV (''Trust'') under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on January 10, 2013.[3] The Commission received no comments on the proposal. On February 20, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A with the Commission.[6]

First Trust Advisors L.P. is the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Adviser is affiliated with the Distributor, a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate.[7]

First Trust High Yield Long/Short ETF

The Fund's primary investment objective is to provide current income. The Fund's secondary investment objective is capital appreciation. The Fund will pursue its objectives by seeking to invest in a broadly diversified portfolio composed principally of high-yield debt securities.

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68581 (January 4, 2013), 78 FR 2295 (''Notice'').

[4] In Amendment No. 1, the Exchange made a number of technical changes to the proposed rule change. In addition, the Exchange clarified that the pooled investment vehicles in which the Fund may invest would be exchange-traded. Because the changes made by Amendment No. 1 are technical in nature and do not materially alter the substance of the proposed rule change, and do not raise any novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (''Exemptive Order''). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on a fixed income portfolio (including without limitation exchange-traded notes and senior loans) or a portfolio invested in a combination of equity securities and fixed income securities, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

[6] *See* Post-Effective Amendment No. 6 to Registration Statement on Form N–1A for the Trust, dated October 11, 2012 (File Nos. 333–174332 and 811–22559) (''Registration Statement'').

[7] *See* Nasdaq Rule 5735(g). The Exchange represents that, in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio. In addition, Nasdaq Rule 5735(g) requires that Adviser personnel who make decisions regarding the Fund's portfolio be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

The Adviser will combine a fundamental credit selection process with top down relative value analysis when selecting investment opportunities. The Adviser believes that an evolving investment environment offers varying degrees of investment risk opportunities in the high-yield, bank loan, and fixed-income instrument markets. In order to capitalize on investments and effectively manage potential risk, the Adviser believes that the combination of thorough and continuous credit risk analysis, market evaluation, diversification, and the ability to reallocate investments is critical to achieving higher risk-adjusted returns.

Primary Investments

The Fund, under normal market conditions,[8] will invest at least 80% of its net assets (plus the amount of any borrowing for investment purposes) in high-yield debt securities that are rated below investment grade at the time of purchase, commonly referred to as ''junk'' bonds, or unrated securities deemed by the Adviser to be of comparable quality. Such securities may include U.S. and non-U.S. corporate debt obligations, bank loans, and convertible bonds. For purposes of determining whether a security is below investment grade, the lowest available rating will be considered. At least 75% of the Fund's net assets invested in high-yield debt securities will be invested in issuers that have a minimum principal amount outstanding of $100 million or more with respect to U.S. corporate issuers and $200 million or more with respect to non-U.S. corporate issuers, and the portfolio, once fully invested, will include a minimum of 13 non-affiliated issuers.[9]

High-yield debt may be issued by companies without long track records of sales and earnings, or by issuers that have questionable credit strength. High-yield debt and comparable unrated debt securities: (a) Will likely have some quality and protective characteristics that, in the judgment of the rating agency evaluating the instrument, are outweighed by large uncertainties or major risk exposures to adverse conditions; and (b) are predominantly speculative with respect to the issuer's capacity to pay dividends or interest and repay principal in accordance with the terms of the obligation. Many below-investment-grade debt securities are subject to legal or contractual restrictions limiting the Fund's ability to resell the securities to the general public.

The Fund may invest in corporate debt securities issued by U.S. and non-U.S. companies of all kinds, including those with small, mid, and large capitalizations. Notes, bonds, debentures, and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Corporate debt may carry fixed or floating rates of interest.

The Fund may invest up to 15% of its net assets in bank loans, which may also include loan interests that are not secured by any specific collateral of the borrower, loan interests that have a lower than first-lien priority on collateral of the borrower, loans to foreign borrowers, loans in foreign currencies, and other loans with characteristics that the Adviser believes qualify as bank loans. The Fund may invest in such loans by purchasing assignments or all or a portion of loans or loan participations from third parties. These loans are made by or issued to corporations primarily to finance acquisitions, refinance existing debt, support organic growth, or pay out dividends, and are typically originated by large banks and are then syndicated out to institutional investors as well as to other banks. Bank loans typically bear interest at a floating rate although some loans pay a fixed rate. Due to their subordination in the borrower's capital structure, unsecured and/or subordinated loans involve a higher degree of overall risk than senior bank loans of the same borrower. Unfunded contracts are commitments by lenders to loan an amount in the future or that is due to be contractually funded in the future. The Fund will invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment.

The Fund may invest in non-income-producing securities, including defaulted securities and common stocks[10] and companies whose financial condition is troubled or uncertain and that may be involved in bankruptcy proceedings, reorganizations, or financial restructurings. The Fund may also invest in investment-grade[11] debt securities. The Fund does not have any portfolio maturity limitation and may invest its assets in securities with short-term, medium-term, or long-term maturities. The Fund will not invest more than 15% of the portfolio in such distressed securities, as determined at the time of the investment.

Non-U.S. debt securities in which the Fund may invest include debt securities issued or guaranteed by companies organized under the laws of countries other than the United States (including emerging markets), debt securities issued or guaranteed by foreign, national, provincial, state, municipal, or other governments with taxing authority or by their agencies or instrumentalities, and debt obligations of supranational governmental entities such as the World Bank or European Union. These debt securities may be U.S. dollar-denominated or non-U.S. dollar-denominated. Non-U.S. debt securities also include U.S. dollar-denominated debt obligations, such as ''Yankee Dollar'' obligations, of foreign issuers and of supranational government entities. Yankee Dollar obligations are U.S. dollar-denominated obligations issued in the U.S. capital markets by foreign corporations, banks, and governments. Foreign debt securities also may be traded on foreign securities exchanges or in over-the-counter capital markets. Under normal market conditions, up to 10% of the net assets of the Fund's investment in foreign securities may be denominated in currencies other than the U.S. dollar. To the extent the Fund invests in such instruments, the value of the assets of the Fund as measured in U.S. dollars will be affected by changes in exchange rates.

The Fund may invest in preferred securities and convertible securities. Preferred securities, which generally pay fixed or adjustable-rate dividends or interest to investors, have preference over common stock in the payment of dividends or interest and the liquidation of a company's assets, which means that

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] If a downgrade occurs, the Adviser will consider what action, including the sale of such security, is in the best interest of the Fund and its shareholders.

[10] The equity securities in which the Fund may invest (including any that have converted from convertible debt) will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[11] According to the Adviser, ''investment grade'' means securities rated in the Baa/BBB categories or above by one or more nationally recognized securities rating organizations (''NRSROs''). If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.

a company typically must pay dividends or interest on its preferred securities before paying any dividends on its common stock. Preferred securities are generally junior to all forms of the company's debt, including both senior and subordinated debt.

As part of its investment strategy, the Fund intends to maintain both long and short positions in securities under normal market conditions. The Fund will take long positions in securities that the Adviser believes in the aggregate to have the potential to outperform the Fund's benchmark, the Bank of America Merrill Lynch U.S. High Yield Master II Constrained Index (''Index''). The Fund's long positions may total up to 130% of the Fund's Managed Assets. ''Managed Assets'' means the average daily gross asset value of the Fund (which includes the principal amount of any borrowings), minus the sum of the Fund's liabilities. The Fund will take short positions in securities that the Adviser believes in the aggregate will underperform the Index. These securities may consist of securities included in the Index or other securities, including U.S. Treasury securities and/or corporate debt obligations that may be rated investment grade or non-investment grade, which the Adviser believes in the aggregate will underperform the Index. The Fund's short positions may total up to 30% of the Fund's Managed Assets. A ''short sale'' is a transaction in which the Fund sells a security that it does not own (and borrows the security to deliver it to the buyer) in anticipation that the market price of the security will decline. The proceeds received from the Fund's short sales of securities will generally be used to purchase all or a portion of the Fund's additional long positions in securities.

The Fund will use short sales for investment and risk management purposes, including when the Adviser anticipates that the market price of securities will decline or will underperform the Index in the aggregate. Short selling allows the Fund to profit from a decline in market price to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. In times of unusual or adverse market, economic, regulatory, or political conditions, the Fund may not be able, fully or partially, to implement its short-selling strategy. If a security sold short increases in price, the Fund may have to cover its short position at a higher price than the short sale price, resulting in a loss. The Fund will have substantial short positions and must borrow those securities to make delivery to the buyer.

Other Investments

The Fund may invest in U.S. government securities. U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

The Fund may invest in U.S. agency mortgage-backed securities and collateralized mortgage securities issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the portfolio managers believe securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's''), or Fitch, Inc. (''Fitch'') and having a maturity of one year or less. The use of temporary investments is not a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[12] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which are short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. The Fund may only invest in commercial paper rated A–2 or higher by S&P Ratings, Prime-2 or higher by Moody's, or F2 or higher by Fitch.

The Fund intends to hedge its non-U.S. dollar holdings. Generally, the Fund's currency exchange transactions will be conducted on a spot (*i.e.,* cash) basis at the spot rate prevailing in the currency exchange market. The cost of the Fund's currency exchange transactions will generally be the difference between the bid and offer spot rate of the currency being purchased or sold. In order to protect against uncertainty in the level of future currency exchange rates, the Fund is authorized to enter into various currency exchange transactions.

The Fund may invest up to 10% of its net assets in securities of other open-end or closed-end investment companies, including ETFs [13] that invest primarily in securities of the types in which the Fund may invest directly. In addition, the Fund may invest a portion of its assets in exchange-traded pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly. The Fund

[12] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the action is entered into and at all times during the term of the repurchase agreement.

[13] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities generally designed to track the performance of a securities index, including industry, sector, country, and region indexes. Such ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by such ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in NASDAQ Rule 5705); and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X or 3X) ETFs.

may invest in other investment companies to the extent permitted by the 1940 Act.

The Fund may receive equity, warrants, corporate bonds, and other such securities as a result of the restructuring of the debt of an issuer, reorganization of a bank loan or bond, or as part of a package of securities acquired together with a high-yield bond or senior loan(s) of an issuer. Such investments will be subject to the Fund's investment objectives, restrictions, and strategies as described herein.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including variable rate master demand notes and 144A securities from issues with less than $100 million original principal amount outstanding. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or securities of other investment companies. In addition, the Fund may not, as to 75% of its total assets, (a) invest more than 5% of the value of its total assets in the securities of any one issuer or (b) hold more than 10% of the outstanding voting securities of that issuer (other than securities of other investment companies and obligations issued or guaranteed by the U.S. government or any agency or instrumentality thereof).

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the investment objectives and strategies described in the Registration Statement. The Fund will not invest to enhance leverage. The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, availability of Fund values and other information, and distributions and taxes, among other things, can be found in the Notice and/or Registration Statement, as applicable.[14]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services. On each business day, before commencement of trading in Shares in the Regular Market Session [19] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day.[20] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time.[21] Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[22] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. During hours when the markets for local debt in the Fund's portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations.

In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day, executable price quotations of the fixed-income securities and other assets held by the Fund are available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is also available through subscription services,

[14] *See supra* notes 3 and 6 and respective accompanying text.

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7:00 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m.).

[20] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of fixed-income securities and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

[21] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[22] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. The Web site for the Fund will include a form of the prospectus for the Fund, additional data relating to NAV, and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, the Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange will consider the suspension of trading in or removal from listing of the Shares if the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[23] The Exchange states that the Adviser is affiliated with the Distributor, a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate.[24] The Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[25] The Exchange states that trading of the Shares through Nasdaq will be subject to FINRA's surveillance procedures for derivative products, including Managed Fund Shares.[26] The Exchange may obtain information via the ISG from other exchanges who are members or affiliates of the ISG. Further, the Exchange states that it prohibits the distribution of material, non-public information by its employees.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[27]

(6) At least 75% of the Fund's net assets invested in high yield debt securities will be invested in issuers that have a minimum principal amount outstanding of $100 million or more with respect to U.S. corporate issuers and $200 million or more with respect to non-U.S. corporate issuers, and the portfolio, once fully invested, will include a minimum of 13 non-affiliated issuers.

(7) The Fund will invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including: (a) Rule 144A securities with less than $100 million original principal amount outstanding; and (b) variable rate master demand notes. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

(8) The Fund will not invest more than 15% of the portfolio in distressed securities, as described herein, as determined at the time of the investment.

(9) The equity securities in which the Fund may invest (including any that have converted from convertible debt) will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a

[23] *See* Nasdaq Rule 5735(d)(2)(C)(ii).

[24] *See* Nasdaq Rule 5735(g), *supra* note 6 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[25] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[26] The Exchange states that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement and that it is responsible for FINRA's performance under this regulatory services agreement.

[27] *See* 17 CFR 240.10A–3.

comprehensive surveillance sharing agreement with the Exchange.

(10) Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the investment objectives and strategies described in the Registration Statement. The Fund will not invest to enhance leverage.

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [28] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASDAQ–2012–147), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

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[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68973; File No. SR–NYSEArca–2012–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments No. 1 and No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and No. 2 To List and Trade Shares of the iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

February 22, 2013.

I. Introduction

On June 19, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares Copper Trust (''Trust'' or ''iShares Trust'') pursuant to NYSE Arca Equities Rule 8.201. BlackRock Asset Management International Inc. is the sponsor of the Trust (''Sponsor''). The proposed rule change was published for comment in the **Federal Register** on June 27, 2012.[3]

The Commission initially received one comment letter, which opposed the proposed rule change.[4] On August 8, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] Subsequently, the Commission received additional comments on the proposed rule change.[6]

On December 12, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On December 21, 2012, the Commission designated February 22, 2013, as the date by which the Commission should either approve or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67237 (June 22, 2012), 77 FR 38351 (''Notice'').

[4] *See* letter from Robert B. Bernstein, Vandenberg & Feliu, LLP (''V&F''), to Elizabeth M. Murphy, Secretary, Commission, dated July 18, 2012 (''V&F July 18 Letter''). Comment letters are available at *http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml.* This commenter states that he represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod Corp (collectively, the ''Copper Fabricators''). The commenter states that these companies collectively comprise about 50% of the copper fabricating capacity in the United States. *See* V&F July 18 Letter, *supra,* at 1.

[5] *See* Securities Exchange Act Release No. 67616, 77 FR 48181 (August 13, 2012) (''Order Instituting Proceedings'').

[6] *See* letters from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 (''V&F September 12 Letter''); Ira P. Shapiro, Managing Director, and Deepa A. Damre, Director, Legal and Compliance, BlackRock, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 (''BlackRock Letter''); Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated September 14, 2012 (''Arca September 14 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 27, 2012 (''V&F September 27 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2012 (''V&F November 16 Letter''); Robert B. Bernstein, Partner, Eaton & Van Winkle LLP (''EVW''), to Elizabeth M. Murphy, Secretary, Commission, dated December 7, 2012 (''EVW December 7 Letter''); and email from Janet Klein dated January 7, 2013 (''Klein Email'').

In the V&F September 27 Letter, the commenter incorporated by reference all of his prior comments in opposition to NYSE Arca's proposal to list and trade shares of the JPM XF Physical Copper Trust (''JPM Copper Trust'') (File No. SR–NYSEArca–2012–28). *See* V&F September 27 Letter, *supra,* at 6. Responding to that proposed rule change, the commenter submitted the following: Letters from V&F, received May 9, 2012 (''V&F May 9 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012 (''V&F July 13 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012 (''V&F August 24 Letter''); and Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012 (''V&F September 10 Letter''). The comment letters the commenter incorporated by reference are available at *http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml.* Additionally, the commenter stated that he agrees with the arguments against that proposal set forth in a letter from U.S. Senator Carl Levin, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012 (''Levin Letter''), and attached the Levin Letter to the V&F July 18 Letter. *See* V&F July 18 Letter, *supra,* at 5. The Commission approved NYSE Arca's proposal to list and trade shares of the JPM Copper Trust on December 14, 2012, in an order that addressed these and other comments. *See* Securities Exchange Act Release No. 68440 (December 14, 2012), 77 FR 75468, 75473–86 (December 20, 2012) (SR–NYSEArca–2012–28) (''JPM Order'').

In the V&F September 12 Letter, the commenter requested to make an oral presentation in the proceeding. The Commission denied the commenter's request. *See* letter from Kevin M. O'Neill, Deputy Secretary, Commission, to Robert B. Bernstein, EVW, dated December 5, 2012, *available at http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml.* By letter dated November 29, 2012, Mr. Bernstein informed the Commission that he had left V&F and would continue to represent the Copper Fabricators and RK Capital LLC in this proceeding.

[7] In Amendment No. 1, the Exchange represented that it: (1) Has obtained representations from the Sponsor that the Sponsor is affiliated with one or more broker-dealers and other entities, that the Sponsor will implement a fire wall with respect to such affiliate(s) prohibiting access to material non-public information of the Trust concerning the Trust and the Shares, and that the Sponsor and such affiliate(s) will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares; and (2) can obtain information regarding the activities of the Sponsor and its affiliates under the Exchange's listing rules. Additionally, the Exchange supplemented its description of surveillance applicable to the Shares contained in the proposed rule change as originally filed. Specifically, the Exchange represented that trading in the Shares would be subject to the existing trading surveillances, administered by Financial Industry Regulatory Authority, Inc. (''FINRA'') on behalf of the Exchange, and that, in addition, FINRA would augment those existing surveillances with a review specific to the Shares that is designed to identify potential manipulative trading activity through use of the creation and redemption process. The Exchange represented that all those procedures would be operational at the commencement of trading in the Shares on the Exchange and that, on an ongoing basis, NYSE Regulation, Inc. (on behalf of the Exchange) and FINRA would regularly monitor the continued operation of those procedures. In addition, the Exchange has represented that it will communicate as needed regarding trading in the Shares with other markets that are members of Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. On December 13, 2012, the Exchange submitted a comment letter attaching Amendment No. 1. *See* letter from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated December 13, 2012.

disapprove the proposed rule change.[8] On December 27, 2012, the Exchange filed Amendment No. 2 to the proposed rule change.[9]

The Commission is publishing this notice to solicit comments from interested persons, including whether Amendments No. 1 and No. 2 to the proposed rule change are consistent with the Act, and is approving the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares.[10] The Trust's investment objective is for the value of the Shares to reflect, at any given time, the value of the copper owned by the Trust at that time, less the Trust's expenses and liabilities at that time. The Trust will create Shares only in exchange for copper that: (1) Meets the requirements to be delivered in settlement of copper futures contracts traded on the LME; and (2) is eligible to be placed on London Metal Exchange (''LME'') warrant at the time it is delivered to the Trust.[11] The Trust will not be actively managed and will not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.[12]

A. Description of the Copper Market [13]

The following is a summary of the description of the copper market that the Exchange included in its filing. Copper is traded in the over-the-counter (''OTC'') market and on commodities exchanges. There are spot sales in the physical market, as well as forward contracts, options contracts, and other derivative transactions. A major portion of annual copper production and use is covered through physical transactions, often through renewable annual supply contracts.

Participants in the copper market include primary and secondary producers; fabricators; manufacturers and end-use consumers; physical traders and merchants; the banking sector; and the investment community. Physical traders and merchants generally facilitate the domestic and international trade of copper supplies along the value chain and support the distribution of supplies to consumers. Banking institutions may provide market participants an assortment of services to assist copper market transactions. This investment community is composed of non-commercial market participants engaged in investment in copper or speculation about copper prices. This may range from large-scale institutional investors to hedge funds to small-scale retail investors. In addition, the investment community includes sovereign wealth funds as well as other governmental bodies that stockpile metal for strategic purposes.

1. OTC Copper Market

Physical traders, merchants, and banks participate in OTC spot, forward, option, and other derivative transactions for copper. OTC contracts are principal-to-principal agreements traded and negotiated privately between two principal parties, without going through an exchange or other intermediary. As such, both participants in OTC transactions are subject to counter-party risk, including credit and contractual obligations to perform. The OTC derivative market remains largely unregulated with respect to public disclosure of information by the parties, thus providing confidentiality among principals.

The terms of OTC contracts are not standardized and market participants have the flexibility to negotiate all terms of the transaction, including delivery specifications and settlement terms. The OTC market facilitates long-term transactions, such as life-of-mine off-take agreements,[14] which otherwise could be constrained by contract terms on a futures exchange.

2. Copper Exchanges

According to the registration statement for the Trust (''Registration Statement''),[15] the LME is the longest standing exchange trading copper futures, with the greatest number of open copper futures and options contracts (open interest). The Commodity Exchange, Inc. (''COMEX'') (a division of CME Group, Inc.), the Shanghai Futures Exchange (''SHFE''), and the recently launched Multi Commodity Exchange of India (''MCX'') also trade copper futures. At the end of March 2012, the LME held roughly 64% of copper open interest across the four futures exchanges with copper contracts (adjusted for lot size).

The LME falls under the jurisdiction of the United Kingdom Financial Services Authority (''FSA''). The FSA is responsible for ensuring the financial stability of the exchange member businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activities, including conducting arbitration proceedings under the LME arbitration regulations.

The SHFE is a self-regulatory body under the supervision and governance of the China Securities Regulatory Commission (''CSRC''). The SHFE is the day-to-day overseer of exchange activities, and is expected to carry out regulation as per the laws established by the CSRC. The CSRC serves as the final authority on exchange regulation and policy development and ultimately determines the effectiveness of the SHFE as a regulatory entity. It has the right to overturn or revoke the SHFE's regulatory privileges at any time.

Commodity futures and options traded on the COMEX are subject to regulation by CME Group's Market Regulation Oversight Committee (''MROCC''), under rules of the Commodity Futures Trading Commission (''CFTC'').[16] The MROCC is a self-regulatory body created in 2004 to actively ensure competitive and financially sound trading activity on the CME and its subsidiary exchanges.

Regulation of the MCX falls under the responsibility of the Governing Board of the MCX and the Forward Markets Commission of India pursuant to the Forward Contracts (Regulation) Act of 1952 and amendments made thereafter.

[8] *See* Securities Exchange Act Release No. 68511, 77 FR 77151 (December 31, 2012).

[9] In Amendment No. 2, the Exchange supplemented the representations in the proposed rule change regarding Web site disclosure and made clear that the Trust's Web site will provide detailed information, updated on a daily basis, regarding the copper lot holdings of the Trust, including warehouse locations, warehouse identification numbers, lot numbers, weights, and brands. Additionally, in Amendment No. 2, the Exchange represented that the Trust's Web site will list the copper lots in the order in which they will be delivered in a redemption pursuant to the applicable algorithm. *See infra* text accompanying note 27.

[10] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided interest in and ownership of the net assets of the trust.

[11] *See* Notice, *supra* note 3, 77 FR at 38356.

[12] *See id.* at 38352.

[13] See Notice, *supra* note 3, for a more detailed description of the copper market.

[14] A life-of-mine off-take agreement is an agreement between a producer and a buyer to purchase/sell portions of the producer's future production over the life of the operation. Off-take agreements are commonly negotiated prior to the construction of a project as they can assist in obtaining financing by showing future revenue streams.

[15] The Registration Statement was most recently amended on September 2, 2011 (No. 333–170131).

[16] Copper is traded over two CME platforms: CME Globex and Open Outcry. CME Globex, which offers electronic trading, operates Sunday through Friday, 6:00 p.m., Eastern Time (''E.T.'') through 5:15 p.m. E.T. with a 45-minute break each day beginning at 5:15 p.m. E.T. The Open Outcry operates Monday through Friday 8:10 a.m. E.T. through 1:00 p.m. E.T.

B. Description of the Proposed Rule Change and the Trust [17]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. The Bank of New York Mellon is the trustee of the Trust (''Trustee''). Metro International Trade Services LLC is the custodian of the Trust (''Custodian'').

As mentioned above,[18] the Trust will hold only copper that, at the time it was delivered to the trust, (1) met the requirements to be delivered in settlement of copper futures contracts traded on the LME; and (2) was eligible to be placed on LME warrant. The Trust will not be actively managed and will not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.[19]

The Custodian may keep the Trust's copper at locations within or outside the United States that are agreed from time to time by the Custodian and the Trustee. As of the date of the Registration Statement, the Custodian is authorized to hold copper owned by the Trust at warehouses located in: East Chicago, Indiana; Mobile, Alabama; New Orleans, Louisiana; Saint Louis, Missouri; Hull, England; Liverpool, England; Rotterdam, Netherlands; and Antwerp, Belgium (collectively, ''Approved Warehouses''). Unless otherwise agreed in writing by the Trustee, each of the warehouses where the Trust's copper will be stored must be LME-approved at the time copper is delivered to the Custodian for storage in such warehouse. Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on LME warrant.[20]

The Trustee will calculate the net asset value (''NAV'') of the Trust as promptly as practicable after 4:00 p.m. EST on each business day. The Trustee will value the Trust's copper at that day's announced LME Bid Price.[21] If there is no announced LME Bid Price on a business day, the Trustee will be authorized to use the most recently announced LME Bid Price unless the Sponsor determines that such price is inappropriate as a basis for valuation.[22] The Exchange will obtain a representation from the Trust prior to the commencement of trading in the Shares that the NAV per Share will be calculated daily and made available to all market participants at the same time.[23]

The Trust expects to create and redeem Shares on a continuous basis but only with authorized participants in blocks of five or more baskets of 2,500 Shares each (each basket of 2,500 Shares, a ''Basket'').[24] In connection with the creation of Baskets, only copper that meets the requirements to be delivered in settlement of copper futures contracts traded on the LME and that is eligible to be placed on LME warrant at the time of delivery to the Trust may be delivered to the Trust in exchange for Shares.[25] Upon deposit of the corresponding amount of copper with the Custodian and the payment of applicable fees by an authorized participant, the Trustee will deliver the appropriate number of Baskets to the Depository Trust Company (''DTC'') account of the authorized participant.[26] Conversely, authorized participants may redeem Shares by surrendering five or more Baskets, each in exchange for the Basket Copper Amount announced by the Trustee on the first business day on which the LME Bid Price is announced following the date of receipt of the redemption order. Upon surrender of the Baskets and payment of applicable fees, expenses, taxes, and charges, the Custodian will transfer from the Trust's account to the authorized participant's account the aggregate Basket Copper Amount corresponding to the Baskets surrendered for redemption and will send written confirmation thereof to the Trustee, which will then cancel all Shares so redeemed. The specific copper to be transferred to the redeeming authorized participant's account will be selected by the Custodian pursuant to an algorithm that gives priority to the delivery of copper that no longer meets LME requirements (*e.g.,* is of a brand, or held at a location, that is no longer LME approved) or is on LME warrant (in the rare instances where some of the Trust's copper may be on LME warrant).[27] Within each category, copper will be selected for transfer to redeeming authorized participants on a last-in-first-out basis. If the copper transferred to the redeeming authorized participant's account meets the requirements of the LME to be placed on warrant, and the Custodian is able to issue LME warrants at such time, promptly after a redemption, the Custodian will issue to the redeeming authorized participant one or more LME warrants representing as much copper transferred to the authorized participant's account as may be placed on LME warrant in compliance with the LME rules and without the Custodian having to break apart any specific parcel of copper so transferred pursuant to the algorithm referred to above.[28]

To facilitate the issuance of Baskets,[29] the Sponsor has arranged for J. Aron & Company (''J. Aron''), an international commodities dealer and subsidiary of The Goldman Sachs Group, Inc. (which owns the Custodian), to stand ready to: (i) Make available for sale to eligible authorized participants any fractional amounts of copper needed to meet the obligation to transfer to the Trust the exact Basket Copper Amount in exchange for each Basket purchased from the Trust; and (ii) to the extent the lots of copper an eligible authorized

[17] See Notice, *supra* note 3, for a more detailed description. Additional details regarding the Trust also are set forth in the Registration Statement, *supra* note 15.

[18] *See supra* text accompanying note 11.

[19] *See supra* text accompanying note 12.

[20] *See* Notice, *supra* note 3, 77 FR at 38356 n.23.

[21] The ''LME Bid Price'' is announced by the LME at 1:20 p.m. London Time and represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system. *See id.* at 38356 n.25. LME warrants, which are documents representing possession, are used as the means of delivering metal or plastics under LME contracts. *See id.* at 38355. The ownership of copper represented by warrants is transferred through LMEsword, an electronic transfer system for the purchase and sale of exchange issued warrants that facilitates the reporting of inventories. *See id.* Each warrant is invoiced at the contract weight, which is permitted to vary +/−2% from the specified 25 tonne lot of copper. Only registered LME copper brands are approved for delivery. *See id.*

[22] *See id.* at 38358.

[23] *See id.* at 38359.

[24] *See id.* at 38356.

[25] *See id.*

[26] In exchange for each Basket purchased, an authorized participant must deposit the Basket Copper Amount announced by the Trustee on the first business day on which the LME Bid Price is announced following the date of receipt of the purchase order. *See id.* at 38356. The ''Basket Copper Amount'' is the amount of copper (measured in tonnes and fractions thereof), determined on each business day by the Trustee, which authorized participants must transfer to the Trust in exchange for a Basket, or are entitled to receive in exchange for each Basket surrendered for redemption. *See id.* at 38356 n.24.

[27] Generally, authorized participants desiring to create with copper on warrant will be required to take such copper off warrant prior to delivery to the Custodian. *See id.* at 38357 n.29. *See also id.* at 38356 n.23 (''Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on Warrant.'').

[28] In the normal course of the Trust's operations, it is anticipated that authorized participants will receive LME warrants (not warehouse receipts) following a redemption transaction. *See id.* at 38358. If it is not possible for the Custodian to issue LME warrants in connection with a redemption of Shares, the Custodian will deliver to the redeeming authorized participant one or more negotiable warehouse receipts representing the copper transferred to the authorized participant's account in connection with such redemption. *See id.* at 38357–58.

[29] The Exchange states that because copper usually trades in lots of 25 tonnes, with plus or minus 2% deviations being accepted in the industry, an authorized participant may not find readily available in the market the exact Basket Copper Amount needed in connection with the issuance of a new Basket. *See id.* at 38356.

participant intends to use in connection with an issuance of a Basket exceed the corresponding Basket Copper Amount, purchase any amount of such copper from such authorized participant.[30]

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association.[31] The Exchange also will make available via the Consolidated Tape trading volume, closing prices, and the NAV for the Shares from the previous day.[32] The intraday indicative value (''IIV'') per Share,[33] updated at least every 15 seconds, as calculated by the Exchange or a third-party financial data provider, will be widely disseminated by one or more major market data vendors during the Core Trading Session on the Exchange (9:30 a.m. to 4:00 p.m. E.T.).[34]

The Trust's Web site will contain the following information, on a per-Share basis, for the Trust: (a) The NAV as of the close of the prior business day and the mid-point of the bid-ask price at the close of trading in relation to such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[35] The Trust's Web site also will disclose the list of copper held by the Trust, updated on a daily basis, and display the following information: The Basket Copper Amount; the Trust's prospectus; the two most recent reports to stockholders; and the last sale price of the Shares as traded in the U.S. market.[36]

The Exchange states that investors may obtain, almost on a 24-hour basis, copper pricing information based on the spot price of copper from various financial information service providers, such as Reuters and Bloomberg.[37] Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of copper and last-sale prices of copper futures, as well as information and news about developments in the copper market.[38] Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on copper prices directly from market participants.[39] Moreover, there are a variety of public Web sites providing information on copper, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Wall Street Journal.*[40] The Exchange will provide on its Web site (*www.nyx.com*) a link to the Trust's Web site.[41]

NYSE Arca will require that a minimum of 100,000 Shares be outstanding at the start of trading,[42] which represents 1,000 metric tons of copper. The Trust seeks to register 12,120,000 Shares.[43]

Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the Exchange until such time as the NAV is available to all market participants at the same time. If the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[44] Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12-month period following commencement of trading: (1) The value of copper is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated source providing that value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. More generally, with respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.[45] Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[46] These may include: (1) The extent to which conditions in the underlying copper market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[47] Additionally, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rule, NYSE Arca Equities Rule 7.12.[48]

NYSE Arca represents that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of NYSE Arca rules and applicable federal securities laws.[49] The Exchange states that its existing trading surveillances, which are administered by FINRA, generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity.[50] NYSE Arca states that, in addition to those surveillances, FINRA will implement a product-specific review designed to identify potential manipulative trading activity through the use of the creation and redemption process, and that NYSE Regulation, Inc., on behalf of the Exchange, will monitor to ensure that these procedures continue to be operational.[51]

The Exchange also states that, pursuant to NYSE Arca Equities Rule 8.201(g), it is able to obtain information regarding trading in the Shares, physical copper, copper futures contracts, options on copper futures, or any other

[30] The Goldman Sachs Group, Inc. and its affiliates (''GS Entities'') have represented to the Sponsor that they maintain policies that are reasonably designed to prevent misuse or improper dissemination of nonpublic information, including a ''need-to-know'' standard that states that confidential information may be shared only with persons who have a need to know the information to perform their duties and to carry out the purpose(s) for which the information was provided. *See id.* at 38357 n.26. In addition, GS Entities have represented to the Sponsor that they maintain specific policies and procedures that are reasonably designed to protect confidential and commercially sensitive information associated with the Custodian's business from being shared with GS Entity individuals engaged in commodity sales and trading activities. *See id.*

[31] *See id.* at 38358.

[32] *See id.* at 38359.

[33] The IIV will be calculated by multiplying the indicative spot price of copper (the three-month LME copper contract) by the quantity of copper backing each Share as of the last calculation date. *See id.*

[34] *See id.*

[35] *See id.*

[36] *See id. See also* Amendment No. 2, *supra* note 9 (providing more details regarding the information about the Trust's copper holdings that will be available on the Trust's Web site).

[37] *See* Notice, *supra* note 3, 77 FR at 38359.

[38] *See id.*

[39] *See id.*

[40] *See id.* For example, the LME publishes LME official price information on its Web site with a one-day delay; LME official price information also is published on Basemetals.com and Metal-Page.com with a one day delay; COMEX publishes on its Web site delayed futures and options information on current and past trading sessions and market news free of charge. *See id.* The Exchange also states that the current day's LME official prices (such as the LME Bid Price used to calculate the NAV of the Shares) are available from major market data vendors for a fee. *See id.*

[41] *See id.*

[42] *See id.*

[43] *See* Registration Statement, *supra* note 15.

[44] *See* Notice, *supra* note 3, 77 FR at 38359.

[45] *See id.*

[46] *See id.*

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] *See* Amendment No. 1, *supra* note 7.

[51] *See id.*

copper derivative from Equity Trading Permit holders (''ETP Holders'') acting as registered market makers, in connection with their proprietary or customer trades.[52] More generally, NYSE Arca states that it has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business.[53] With respect to a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange states that it can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.[54] Further, NYSE Arca states that it may obtain trading information via the ISG from other exchanges that are members of the ISG, including CME Group, Inc., which includes COMEX, and that it has entered into a comprehensive surveillance sharing agreement with the LME that applies with respect to trading in copper and copper derivatives.[55]

Prior to the commencement of trading, the Exchange represents that it will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Baskets (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of physical copper trading during the Core and Late Trading Sessions after the close of the major world copper markets;[56] and (f) trading information.[57]

The Notice and the Registration Statement include additional information regarding: the Trust; the Shares; the Trust's investment objectives, strategies, policies, and restrictions; fees and expenses; creation and redemption of Shares; the physical copper market; availability of information; trading rules and halts; and surveillance procedures.[58]

III. Discussion and Commission Findings

After careful review and for the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,[59] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[60] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[61] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 11A(a)(1)(C)(iii) of the Act,[62] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Further, pursuant to Section 3(f) of the Act,[63] the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation.

One commenter submitted five comment letters to explain its opposition to the proposed rule change.[64] Generally, the opposing commenter asserts that the proposed rule change is inconsistent with Section 6(b)(5) of the Act.[65] The commenter asserts that the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in a substantial reduction in the supply of global copper available for immediate delivery, and that this reduction in short-term supply would increase both the price of copper and volatility in the copper market, which would in turn significantly harm the U.S. economy.[66] The commenter further states that the predicted decrease in copper available for immediate delivery would make the physical copper market more susceptible to manipulation.[67]

In response, the Sponsor generally states the Trust will provide a more liquid and cost-effective vehicle for investment in the physical copper market.[68] The Sponsor expects that much of the initial demand for the Shares will represent a reallocation of current investments in physical copper by professional copper market participants rather than new incremental demand.[69] The Sponsor does not anticipate that creation of the Trust will impact copper prices,[70] and disagrees with the notion that the Trust will render the copper market more susceptible to manipulation.[71]

[52] *See* Notice, *supra* note 3, 77 FR at 38359.

[53] *See* Amendment No. 1, *supra* note 7.

[54] *See id.*

[55] *See* Notice, *supra* note 3, 77 FR at 38360. The Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* Amendment No. 1, *supra* note 7.

[56] The Exchange's Core Trading Session is between 9:30 a.m. to 4:00 p.m. E.T. *See* Notice, *supra* note 3, 77 FR at 38359. The Exchange's Late Trading Session begins after the end of the Core Trading Session and concludes at 8:00 p.m. E.T. *See* NYSE Arca Equities Rule 7.34(a)(3).

[57] *See* Notice, *supra* note 3, 77 FR at 38360.

[58] *See* Notice and Registration Statement, *supra* notes 3 and 15, respectively.

[59] 15 U.S.C. 78f.

[60] 15 U.S.C. 78f(b)(5).

[61] 15 U.S.C. 78f(b)(8).

[62] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[63] 15 U.S.C. 78c(f).

[64] *See* V&F July 18 Letter, *supra* note 4; V&F September 12 Letter, *supra* note 6; V&F September 27 Letter, *supra* note 6; V&F November 16 Letter, *supra* note 6; and EVW December 7 Letter, *supra* note 6. As discussed above, the commenter also attached to his letters other comment letters, or incorporated other comment letters by reference. *See supra* note 6 (citing V&F September 27 Letter). This commenter is referred to as ''the commenter,'' although the Commission also received an email from another commenter who opposes the proposed rule change. Ms. Janet Klein asserted that approval of the proposed rule change: (1) Would be ''contrary to rational oversight of wise practice,'' without explaining the basis for her judgment; (2) would not contribute to the economy; and (3) would promote ''speculative swings of a commodity price not related to supply/demand,'' again without explaining the basis for her conclusion. *See* Klein Email, *supra* note 6. The impact of the proposed rule change on the price of copper is discussed below in Section III.B.

[65] 15 U.S.C. 78f(b)(5).

[66] *See* V&F May 9 Letter, *supra* note 6, at 5–7.

[67] *See id.* at 1, 10.

[68] *See* BlackRock Letter, *supra* note 6, at 1.

[69] *See id.* at 4.

[70] *See id.* at 5.

[71] *See id.* at 6.

Given the concerns expressed by the commenter that the Trust would remove a substantial amount of the supply of copper available for immediate delivery over a short period of time, which would render the physical copper market more susceptible to manipulation, and that the Trust therefore would provide market participants an effective means to manipulate the price of copper and thereby the price of the Shares,[72] the Commission analyzes the comments to examine, among other things, the extent to which the listing and trading of the Shares may (1) impact the supply of copper available for immediate delivery and the ability of market participants to manipulate the price of copper, and (2) be susceptible to manipulation. The sections below summarize and respond to the comments received.

A. The Trust's Impact on the Supply of Copper Available for Immediate Delivery

The commenter believes that the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in the withdrawal of substantial quantities of copper from LME and COMEX warehouses, thus negatively impacting the supply of copper available for immediate delivery.[73] As discussed below, this belief assumes that: (1) Copper held by the Trust would not be available for immediate delivery; (2) the global supply of copper available for immediate delivery that could be used to create Shares consists almost exclusively of copper already under LME or COMEX warrant, and therefore the Shares would be created primarily using copper already under LME or COMEX warrant; and (3) the Trust would acquire a substantial amount of copper within a short period of time, such that copper suppliers would not be able to adjust production to replace the copper removed from the market by the Trust. The Commission believes the record does not support the commenter's conclusions, which are based on his contentions, and thus, for the reasons discussed below, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.

1. Availability of the Trust's Copper

The commenter asserts that copper held by the Trust would not be available for immediate delivery, and therefore copper deposited into the Trust would be removed from the market and would be unavailable to end-users.[74] In response, the Sponsor asserts that the Trust would not remove immediately available copper inventory from the market.[75] The Sponsor predicts that demand for the Shares is most likely to come from current metals dealers and others who already hold physical copper inventory or investments, and that the creation of Shares by these entities will not affect available supply.[76] The Sponsor also notes that Shares can be redeemed as well as created, thus allowing the Trust's copper to be withdrawn by authorized participants.[77]

The Commission agrees with the Sponsor that copper held by the Trust will remain available to consumers and other participants in the physical copper market because: (1) The Trust will not consume copper; (2) Shares are redeemable (in size) for copper on every business day; and (3) provided certain conditions are met, on the third business day after the day on which the LME Bid Price is announced following the placement of a redemption order, the Custodian will transfer from the Trust's account to the redeeming authorized participant's account the parcels of copper identified pursuant to the Trustee's algorithm and corresponding to the number of Baskets surrendered, and promptly thereafter, the Custodian will issue either (a) one or more LME warrants, if the copper transferred can then be placed on LME warrant and the Custodian is able to issue LME warrants, or (b) negotiable warehouse receipts, if the copper transferred cannot be placed on LME warrant or if the Custodian cannot issue LME warrants.[78] Accordingly, in the normal course of the Trust's operations, redeeming authorized participants will receive copper that the commenter acknowledges is available for immediate delivery (*i.e.,* copper on LME warrant).[79] Given the structure of the Trust, the Commission believes that the amount of copper accessible to industrial users will not meaningfully change as a result of the listing and trading of the Shares. Accordingly, the Commission believes that the proposed rule change will not burden capital formation for users who acquire copper for industrial and other purposes.

The commenter states that end users would not acquire Shares for the purpose of redeeming them to acquire copper because the copper they would receive in exchange for Shares might be in a location far from their plants or might be of brands that are not acceptable to their plants.[80] Regardless

[72] *See* V&F May 9 Letter, *supra* note 6, at 1, 10.

[73] *See* V&F July 18 Letter, *supra* note 4, at 1–2.

[74] *See id.* at 5.

[75] *See* BlackRock Letter, *supra* note 6, at 3–4. *See also* V&F September 12 Letter, *supra* note 6, at 2 (''Copper backed ETFs will also not affect the aggregate inventory of copper. But the ETF will move the inventory that resides within the LME outside of the LME.'').

[76] *See* BlackRock Letter, *supra* note 6, at 4.

[77] *See id.* at 3.

[78] *See* Registration Statement, *supra* note 15. The Exchange states that, in the normal course of the Trust's operations, it is anticipated that authorized participants will receive LME warrants following a redemption transaction and that, in the event that its copper is no longer warrantable, the Trust will have operational procedures in place to put such metal on LME warrant when possible. *See* Notice, *supra* note 3, 77 FR at 38357–58.

[79] *See, e.g.,* V&F July 18 Letter, *supra* note 4, at 1 (''[T]he copper in the LME and [COMEX] warehouses is the only refined copper generally available for immediate delivery.''). The Commission believes that the wait time discussed above to receive a LME warrant—or in some cases a negotiable warehouse receipt—is not a significant enough delay to consider the copper held by the Trust unavailable for immediate delivery because, as mentioned above, on the third business day after the day on which the LME Bid Price is announced following the placement of a redemption order, the Custodian will transfer from the Trust's account to the redeeming authorized participant's account the parcels of copper identified pursuant to the Trustee's algorithm and corresponding to the number of Baskets surrendered, and promptly thereafter, the Custodian will issue to the authorized participant either one or more LME warrants, which will be delivered whenever possible, or negotiable warehouse receipts.

The commenter expresses further concern in the EVW December 7 Letter about an increasing length of time that it takes to withdraw metal, including copper, from LME warehouses. The commenter argues that this ''troubling new development'' may, together with the proposed listing and trading of the Shares, jeopardize the ability of United States copper consumers to obtain the physical copper they need in a timely manner. *See generally* EVW December 7 Letter, *supra* note 6. The commenter previously acknowledged, however, that taking copper off LME warrant takes time; according to the commenter: (1) the amount of time it takes to take copper off LME warrant depends ''on the length of the loading out queue'' at the LME warehouse; and (2) queues ''are currently ranging from 275 working days (more than one year) in Vlissingen, Netherlands, 91 working days (4.5 months) in New Orleans, 51 working days (2.5 months) in Johor, Malaysia to under one month in Korea and Rotterdam, Netherlands.'' V&F August 24 Letter, *supra* note 6, at 14. By his December 7 letter, the commenter appears to be updating information previously provided about the length of queues, but does not assert any new reason for disapproving the listing and trading of the Shares that is distinct from his original assertion, responded to in the text above, that listing and trading of the Shares will reduce the supply of copper available for immediate delivery. The Commission notes that the LME appears to be attempting to address the unloading queue issue, see London Metal Exchange, *Consultation on Changes to LME Policy for Approval of Warehouses in Relation to Delivery Out Rates,* Notice 12/296: A295: W152 (November 15, 2012), *available at http://www.lme.com/downloads/notices/12_296_A295_W152_Consultation_on_Changes_to_LME_Policy_for_Approval_of_Warehouses_in_Relation_to_Delivery_Out_Rates.pdf,* which applies to LME warehoused aluminum and zinc, not just copper. *See also* EVW December 7 Letter, *supra* note 6, at 3.

[80] *See* V&F September 10 Letter, *supra* note 6, at 4; V&F July 13 Letter, *supra* note 6, at 7.

of the preferences of these consumers, authorized participants may redeem Shares for copper and the record does not contain any evidence that these or any other consumers of copper could not use the Shares to obtain copper through an authorized participant. Further, the record supports that the same logistical issues currently exist and are addressed by market participants holding LME warrants. For example, it is the Commission's understanding that when a market participant buys a long-dated copper futures contract on the LME and settles for a warrant, or when an LME member buys a cash futures contract in ring trading,[81] these market participants do not know the location or brand of the underlying copper. Accordingly, LME warrant holders sometimes swap warrants to acquire copper of a preferred brand in a convenient location,[82] and nothing in the record indicates that redeeming authorized participants would not be able to swap LME warrants received in connection with Share redemptions for other LME warrants for more suitable copper.

The commenter also expresses concern that investors who hold the Shares would not sell them, and therefore Shares would not be readily available for redemption.[83] This claim is unsupported. There is no evidence in the record to suggest that investors holding the Shares will be unwilling to sell them, particularly in response to market movements or changes in investor needs.[84]

The Commission believes that the listing and trading of the Shares, as proposed, could provide another way for market participants and investors to trade copper, and could enhance competition among trading venues. Further, the Commission believes that the listing and trading of the Shares will provide investors another investment alternative, which could enhance a well-diversified portfolio. By broadening the securities investment alternatives available to investors, the Commission believes that trading in the Shares could increase competition among financial products and the efficiency of financial investment.

2. Source of Copper Used To Create Shares

The commenter asserts that the global supply of copper available for immediate delivery, and eligible to be used to create Shares, consists almost exclusively of copper already under LME or COMEX warrant, and therefore the commenter believes that Shares would be created primarily using copper already under LME or COMEX warrant.[85] The commenter states that the size of the market for copper available for immediate delivery is small relative to the size the commenter expects the Trust to attain, asserting that there are only 240,000 metric tons available on the LME, with an additional 60,000 metric tons available on the COMEX, and projects that the Trust would remove as much as 121,200 metric tons from the market of copper available for immediate delivery.[86] The commenter also asserts that the Trust would be funded with copper on warrant in the United States, which would result in a shortage of copper in the United States.[87] The commenter further urges that the Commission consider collectively the supply impacts of the iShares Trust and the JPM Copper Trust.[88]

In contrast, the Sponsor believes that there are very substantial copper inventories available outside of the LME and COMEX that are deliverable on a short-term basis and that could be used to fund the Trust.[89] The Sponsor states that the Trust will accept creations using both copper already held in, as well as warrantable copper newly delivered to, LME-approved warehouses of the Custodian.[90]

The Commission believes that there is significant uncertainty about the locations from which copper will be purchased to create Shares.[91] Based on the description of the Trust in the proposed rule change, authorized participants and their customers will choose what eligible copper to deposit with the Trust. As discussed further

[81] Open outcry trading includes, for each metal traded on the exchange, four five-minute sessions taking place around the ring of the exchange (each such session, a ''ring''). *See* Notice, *supra* note 3, 77 FR at 38355.

[82] *See* V&F September 12 Letter, *supra* note 6, at 5.

[83] *See* V&F September 10 Letter, *supra* note 6, at 3. *See also* V&F September 12 Letter, *supra* note 6, at 4.

[84] The commenter provides a chart that it says shows the number of shares outstanding for the SPDR Gold Trust and the iShares Silver Trust, and states that ''[i]n spite of price volatility in the market there has been very little volatility in the aggregate number of shares listed.'' *See* V&F September 12 Letter, *supra* note 6, at 4. The commenter asserts that if the same occurs in relation to the Shares, it would pose ''a substantial risk to the unit redemption process.'' *See id.* The Commission does not believe this chart supports the commenter's claim that Shares would be unavailable for redemption. Rather, the Commission believes the chart reveals that redemptions of shares of those other trusts did occur, as evidenced by the data showing that the number of shares outstanding in those trusts has increased *and* decreased over time. Accordingly, the Commission believes that this data does not show investors will not redeem their Shares, as the commenter claims.

[85] *See* V&F July 18 Letter, *supra* note 4, at 2; and V&F September 27 Letter, *supra* note 6, at 2.

[86] *See* V&F July 18 Letter, *supra* note 4, at 1. How the commenter measures the projected size of the Trust is discussed *infra* in Section III.A.3.

[87] *See* V&F July 18 Letter, *supra* note 4, at 4.

[88] The commenter asserts that the collective impact of the iShares Trust and the JPM Copper Trust could result in the removal of 183,000 metric tons of copper from the market, or 63% of the copper available in LME and COMEX warehouses. *See id.* at 1. For the reasons discussed in Section III.A, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery. The Commission also notes that, in approving the listing and trading of shares of the JPM Copper Trust, the Commission explained why it does not believe that the listing and trading of those shares is likely to disrupt the supply of copper available for immediate delivery. *See* JPM Order, *supra* note 6, 77 FR 75468, 75473–77. Similarly, the Commission does not believe that the trusts, considered collectively, are likely to disrupt the supply of copper available for immediate delivery.

[89] *See* BlackRock Letter, *supra* note 6, at 2. The Sponsor asserts that ''[d]uring years when the refined copper market is in a deficit copper fabricators and other end users can consume supplies from warehouses [sic] stocks held by producers, consumers, merchants and traders, governments, and exchange warehouses.'' *See* BlackRock Letter, *supra* note 6, at Exhibit B. *But see* V&F September 12 Letter, *supra* note 6, at 3 (''The only other theoretical source of ETF feedstock copper is current off-warrant stock held by investors, assuming such stock even exists. It is possible that hoarding of copper outside of China has been taking place to the possible benefit of such holders upon commencement of physically backed copper ETF unit creation. We are however unaware of any such inventory.'')

[90] *See* BlackRock Letter, *supra* note 6, at 2. Not all of the approved warehouses are in the United States. *See* Notice, *supra* note 3, 77 FR at 38356 n.23.

[91] The Sponsor provided data estimating that total worldwide warrantable copper supply was 2.926 million tons as of July 2012, of which 1.358 million tons were considered to be ''liquid''; and of the 1.358 million tons of ''liquid'' stock, 434,105 tons are held in LME, COMEX, and SHFE warehouses. *See* BlackRock Letter, *supra* note 6, at 2 (citing Metal Bulletin Research, ''Independent Assessment of Global Copper Stocks,'' August 22, 2012). This leaves 923,895 tons of liquid stock that is not held in LME, COMEX, or SHFE warehouses. The data provided by the Sponsor is substantially similar to data referenced in the JPM Order. *See* JPM Order, *supra* note 6, 77 FR at 75475. The differences between the sets of data appear to be a function of rounding and the inclusion of copper held in SHFE warehouses as part of the liquid stock held in exchanges in the data provided by the Sponsor of the iShares Trust.

The Sponsor asserts that ''[t]he large size of the total copper market as compared to exchange inventories belies the assertion that only exchange inventories will be available for creations into the Trust.'' *See id.* In contrast, the commenter states that ''[e]xcept for copper that may be stored in bonded warehouses in China, all such copper is, as far as we know, subject to long-term supply contracts and is 'liquid,' only in the sense that it is en route to fabricators around the world.'' V&F September 27 Letter, *supra* note 6, at 2. The Commission believes that it is plausible that some portion of the estimated 923,895 metric tons of liquid copper inventory identified by the Sponsor currently would be available for authorized participants to use to create Shares.

below,[92] the Commission also believes that the amount of copper that the Trust will hold is uncertain.[93]

However, even assuming that authorized participants will need to remove copper from LME warrant to deposit the copper into the Trust, as discussed above, the Commission believes that the Trust's copper will remain available for immediate delivery to consumers and participants in the physical markets.[94] Accordingly, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.

3. Growth of the Trust

The commenter states it is reasonable to expect that the Trust would sell all of the Shares covered by the Registration Statement in the three months after the registration becomes effective because of: (1) What the commenter characterizes as the Sponsor's stated desire to remove enough copper from the market for copper available for immediate delivery to cause an artificial rise in price and cover the monthly costs of storage; (2) the commenter's view that there is a very limited quantity of copper available for immediate delivery to accomplish the Trust's objective; and (3) the increase in copper prices in the three months following October 2010, when the iShares Trust, JPM Copper Trust, and ETFS Physical Copper were announced.[95] The commenter also asserts that the copper supply is inelastic and that supply, therefore, is unlikely to increase fast enough to account for the increased demand that the commenter believes would be unleashed by the creation and growth of the Trust.[96] The commenter asserts that the Trust would hold as much as 121,200 metric tons of copper if the Sponsor sells all of the Shares it seeks to register pursuant to the Registration Statement.[97]

The Sponsor argues that it is not possible to extrapolate the ultimate size of the Trust from the number of Shares initially registered because the Trust may not issue any Shares if it is unsuccessful, or the Trust may need to file additional registration statements if it is very successful.[98] The Sponsor also argues that prior experience of other existing commodity-based trusts contradicts the commenter's assertions;[99] specifically, the Sponsor states that it took over two years to sell the shares initially registered for the SPDR Gold Trust and ETFS Physical Platinum and one year to sell the shares initially registered for the iShares Silver Trust.[100]

As a preliminary matter, as the Sponsor pointed out, the commenter appears to conflate the amount of copper held by the Trust with the number of Shares issued. When commodity-based trusts redeem shares, those redeemed shares do not get put ''back on the shelf''; once securities are redeemed, the issuer cannot resell securities of the same amount unless there is either sufficient capacity left on the registration statement (*i.e.,* enough registered securities to cover the new issuance of shares by the issuer) or unless a new registration statement is filed to register the offer and sale of the securities.[101] Accordingly, 12,120,000 issued Shares will correspond to 121,200 metric tons of copper held by the Trust only if authorized participants do not redeem any Shares.[102] Based on the existence of the arbitrage mechanism of the Trust,[103] which is common to many exchange-traded vehicles, the Commission believes it is very unlikely that no Shares will be redeemed.

The Commission believes that the amount of copper held by the Trust will depend on investor demand for the Shares and the extent to which authorized participants fulfill such demand by exchanging copper for Baskets of Shares and do not redeem issued Shares. Investor demand for the Shares is currently unknown. The Commission notes that ETFS Physical Copper has not grown to a substantial size since its inception.[104]

The commenter also predicts that copper supply will not increase fast enough to accommodate what he views as the new demand that will be created by the Trust. The Commission believes that the commenter has not provided evidence to support this projection. Data submitted by the commenter provides that the global supply of refined copper has increased every year since 2000—except 2002 and 2003—and in those years where supply increased, in all but one year (2009), it increased by more than the amount of copper that the commenter predicts the iShares Trust and the JPM Copper Trust will hold collectively.[105] Further, data provided by the commenter project that production will increase through 2016 in amounts that also exceed—and in most years greatly exceed—the amount of copper that the commenter predicts the iShares Trust and the JPM Copper Trust will hold collectively.[106]

As discussed above, the Commission believes that copper held by the Trust will be available for immediate delivery.[107] However, even assuming that the Trust's copper will be unavailable for immediate delivery, the Commission believes that the commenter has not supported his predictions that the Trust will grow so quickly, and that the supply of copper will not increase sufficiently, such that that the Trust will significantly disrupt the supply of copper available for immediate delivery.

[92] *See infra* Section III.A.3.

[93] The Commission drew the same conclusion regarding the size of the JPM Copper Trust. *See* JPM Order, *supra* note 6, 77 FR 75468, 75476–77.

[94] *See supra* Section III.A.1.

[95] *See* V&F August 24 Letter, *supra* note 6, at 20. ETFS Physical Copper is a trust that holds copper under LME warrant; its shares are traded on the London Stock Exchange and Deutsche Börse. *See http://www.etfsecurities.com/en/updates/document_pdfs/ETFS_Physical_Industrial_Copper_Fact_Sheet.pdf.* A discussion of the effect of ETFS Physical Copper on the price of copper is included below. *See infra* Section III.B.

[96] *See* V&F May 9 Letter, *supra* note 6, at 5. *See also* V&F September 12 Letter, *supra* note 6, at 2 (''In the short term, any resulting price appreciation from copper-backed ETF share owners will not affect mine production and may minutely benefit refined production, to the extent that higher copper prices encourage additional scrap recovery and processing. The copper ETF is unlikely to affect the supply of copper from copper refineries in a 0–12 month timeframe.''). The commenter states that, in the longer term, copper miners are likely to respond to price signals and increase production. *See* V&F August 24 Letter, *supra* note 6, at 28.

[97] *See* V&F July 18 Letter, *supra* note 4, at 1.

[98] *See* BlackRock Letter, *supra* note 6, at 3.

[99] *See id.*

[100] *See id.* The Sponsor also notes that ETFS Physical Palladium has yet to deplete the shares initially registered in December 2009. *See id.*

[101] *See* Sections 5 and 6 of the Securities Act, 15 U.S.C. 77e and 15 U.S.C. 77f, respectively.

[102] The Commission drew a similar conclusion regarding the size of the JPM Copper Trust. *See* JPM Order, *supra* note 6, 77 FR 75468, 75476 (''6,180,000 issued Shares will correspond with 61,800 metric tons of copper held by the [JPM Copper Trust] only if authorized participants do not redeem any Shares'').

[103] The arbitrage mechanism allows authorized participants to create and redeem Shares, and is designed to align the secondary market price per Share to the NAV per Share. *See, e.g.,* BlackRock Letter, *supra* note 6, at 7 n.32.

[104] According to the commenter, on December 17, 2010 (one week after the product was launched), ETFS Physical Copper held 1,445.4 metric tons of copper, and on August 3, 2012, it held 1,763.7 metric tons of copper, although there have been periods where ETFS Physical Copper has held greater quantities of copper, reaching as high as 7,072.9 metric tons of copper in March and April of 2012. *See* V&F August 24 Letter, *supra* note 6, at 15.

[105] *See id.* at 2.

[106] *See id.* (providing data indicating that global refined copper production is projected to increase by 519,000 metric tons in 2012; 1,603,000 metric tons in 2013; 1,195,000 metric tons in 2014; 1,091,000 metric tons in 2015; and 375,000 metric tons in 2016).

[107] *See supra* Section III.A.1.

4. Other Physical Commodity Trusts

The commenter admits that the introduction of commodity-based trusts that hold other metals had virtually no impact on the available supply, but asserts that these other metals—gold, silver, platinum, and palladium—are fundamentally different because they have traditionally been held for investment purposes and currently are used as currency, and that, as a result, there were ample stored sources available to fund commodity-based trusts overlying those metals.[108] The commenter asserts that copper, in contrast, generally is not held as an investment, but rather is used exclusively for industrial purposes, with the annual demand generally exceeding the available supply, and, therefore, believes that the introduction of the Trust would impact supply.[109]

In response, the Sponsor states that while gold is used primarily as a currency equivalent and perhaps silver is as well, ''there is little plausible reason to regard platinum and palladium as currency equivalents in a manner that copper is not;'' [110] the Sponsor states that silver, platinum, and palladium are used primarily for industrial purposes.[111] The Sponsor also asserts that copper trading on the OTC market and futures exchanges ''clearly demonstrates that copper is utilized for investment purposes and is viewed by the investment community as an investable asset.'' [112]

Given the industrial usage of silver, platinum, and palladium as compared to copper,[113] the Commission believes that it is reasonable to project that any impact of the listing and trading of the Shares will not be meaningfully different than that of the listing and trading of shares of these other commodity-based trusts due solely to the nature of the underlying commodity markets. In any event, the Commission's analyses above in Sections III.A.1–3 are the primary bases for the Commission's belief that the listing and trading of the Shares is not likely to disrupt the supply of copper available for immediate delivery. The non-impact of those other trusts on the supplies in the underlying precious metals markets is consistent with this view, but it is not a significant factor underlying it.

B. The Trust's Impact on the Price of Copper

Due to what he predicts will be a rapid growth of the Trust, the commenter believes a substantial portion of the supply of immediately available LME-warranted copper would be removed from the market,[114] which would drive up the price of copper.[115] As noted above, the commenter estimates that the iShares Trust, which would hold up to 121,200 metric tons of copper, and the JPM Copper Trust, which would hold up to 61,800 metric tons of copper, collectively would hold approximately 63% of the copper available in LME and COMEX warehouses, which the commenter asserts is the only refined copper generally available for immediate delivery.[116] The commenter concludes that the removal of so much copper from LME and COMEX warehouses will lead to artificially inflated prices.[117] The commenter also states: ''[t]he LME settlement price is axiomatically affected by the quantity of copper on warrant * * * because the quantity on warrant defines how much copper is eligible to be delivered against a cash contract, *i.e.* it is the total supply that is available when setting the settlement price.'' [118] The commenter further asserts that the launch of the UK-listed ETFS Physical Copper security and announcements about the proposed copper trusts in the United States were part of the cause of a copper price run up,[119] and predicts that the price increases for copper would be especially dramatic in the U.S., where copper currently is relatively inexpensive.[120] The commenter further argues that the listing and trading of the Shares would ''risk endangering the price discovery functions of the LME and [COMEX].'' [121]

In contrast, the Sponsor asserts that copper prices are a function of demand and supply, as well as other factors, and that it would be difficult to predict the impact of the introduction of an exchange-traded vehicle backed by physical copper on copper prices given the many variables that exist.[122] The Sponsor argues that it is impossible to predict demand for the Shares; the future behavior of investors and copper market participants; the supply and demand dynamics of the copper market outside of the Trust; or fundamental economic factors that impact demand for copper.[123] In addition, the Sponsor asserts that data show that there is a weak correlation between LME copper prices and global supply and demand balances.[124] The Sponsor also states its disagreement with contentions that any increase in copper prices that results from the listing and trading in the Shares will be especially dramatic in the U.S.[125] According to the Sponsor, ''[t]here exists widespread lack of consensus in the marketplace regarding where authorized participants will have the most ready access to copper and where an authorized participant will be economically incentivized to deliver copper in connection with a creation of Shares of the Trust.'' [126]

As discussed above,[127] the Commission does not believe that the listing and trading of the Shares is likely

[108] *See* V&F May 9 Letter, *supra* note 6, at 2.

[109] *See* V&F May 9 Letter, *supra* note 6, at 2–3. The Levin Letter, which the commenter attached to the V&F July 18 Letter, states that because copper is very expensive to store and difficult to transport, relative to precious metals, copper is not currently held for investment purposes, and predicts that holding copper for investment purposes will have a significantly greater impact on the copper market than the precious metals commodity-based trusts had on their markets and the broader economy. *See* Levin Letter, *supra* note 6, at 7.

[110] *See* BlackRock Letter, *supra* note 6, at 7.

[111] *See id.* at 7–8.

[112] *See id.* at 8. For example, the Sponsor cites data showing that non-commercial market participants trading copper futures on the COMEX accounted for, on average, 40% of total reported copper positions in the first half of 2012, which the Sponsor suggests is similar to the non-commercial market participation in the precious metals markets. *See id.* at 8 n.35.

[113] In the Order Instituting Proceedings, the Commission asked for comment regarding how much gold, silver, platinum, and palladium has been used for investment and industrial purposes in each of the last 10 years. *See* Order Instituting Proceedings, *supra* note 5, 77 FR 48181, 48187. In response, the Sponsor stated that silver, platinum, and palladium are used ''primarily for industrial purposes.'' BlackRock Letter, *supra* note 6, at 7–8. The Sponsor also provided data to support its contention that the investment community regards copper—like gold, silver, platinum, and palladium—as an investable asset. *See id.* While declining to provide data regarding the industrial usage of silver, the commenter presented evidence that gold, platinum, and palladium are put to industrial use. *See* V&F August 24 Letter, *supra* note 6, at 18–19. Further, in approving the listing and trading of shares of the JPM Copper Trust, the Commission similarly noted the industrial use of silver, platinum, and palladium. *See* JPM Order, *supra* note 6, 77 FR 75468, 75477.

[114] *See supra* Section III.A.1.

[115] *See* V&F May 9 Letter, *supra* note 6, at 5. *See also* V&F September 12 Letter, *supra* note 6, at 4.

[116] *See* V&F July 18 Letter, *supra* note 4, at 1.

[117] *See id.* at 1–2.

[118] *See* V&F August 24 Letter, *supra* note 6, at 7.

[119] *See id.* at 16.

[120] *See* V&F July 18 Letter, *supra* note 4, at 4.

[121] *See id.* The commenter does not explain why he believes the listing and trading of the Shares would endanger the price discovery functions of the LME and COMEX.

[122] *See* BlackRock Letter, *supra* note 6, at 5.

[123] *See id.*

[124] *See id.* The Sponsor provided charts showing correlation coefficients between monthly and annual changes in copper prices and copper supply/demand balance. As discussed below, Commission staff performed its own analyses to look for evidence of price impact related to changes in copper inventory levels and fund flows. *See infra* note 128.

[125] *See* BlackRock Letter, *supra* note 6, at 5 n.26. *See also supra* notes 91–93 and accompanying text (stating the Commission's belief that there is significant uncertainty about the locations from which copper will be purchased to create Shares).

[126] *See* BlackRock Letter, *supra* note 6, at 5 n.26.

[127] *See supra* Section III.A.

to disrupt the supply of copper available for immediate delivery, which is what the commenter predicts would increase the price of copper. However, even if the supply of copper under LME warrant would decrease because previously warranted copper were transferred to the Trust, for the reasons discussed below, the Commission does not believe that lower LME inventory level by itself will increase the LME Bid Price (or any other price of copper).

To analyze the potential impact of changes in the LME inventory level on changes in the LME Bid Price, Commission staff performed two regression analyses.[128] The first analysis was a linear regression of daily copper price changes, using five years of daily data from 2007–2012, against the following explanatory variables: the change in LME copper inventory from the previous day (*i.e.,* the lagged change in LME copper inventory), and the changes in spot prices of nickel, tin, gold, silver, platinum, and palladium, and the S&P 500, VIX index, and the China A-Shares index returns. The results indicate that LME copper inventories do not appear to have any independent statistical effect on prices.[129]

Commission staff also performed a similar regression analysis using monthly data from January 2000 until June 2012 obtained from the International Copper Study Group (''ICSG'') to determine whether a relation between copper prices and LME inventories exists over a longer time horizon. The second analysis was a linear regression of monthly copper price changes against the following explanatory variables: the previous month's change in LME copper inventory, total exchange copper inventory (*i.e.,* combined inventory from LME, COMEX, and SHFE), non-exchange copper inventory (*i.e.,* inventory from merchants, producers, and consumers), and spot price changes for nickel, tin, and platinum. This analysis again indicates that LME inventories specifically do not appear to have any independent statistical effect on prices.[130]

Based on these analyses, even if the listing and trading of Shares were to result in the removal of copper on warrant from LME inventories, the Commission does not believe that such a supply reduction will by itself directly impact the LME Bid Price (or any other price of copper). Although total exchange inventories, in contrast to LME inventories, appear to have some effect on monthly copper prices in this linear regression analysis, the coefficient estimate associated with total exchange inventories indicates that copper prices should decrease when copper is taken off-exchange.[131]

Commission staff also performed Granger causality analyses[132] to test the causal effect the holdings of other commodity-based trusts historically have had on the prices of their underlying commodities. Specifically, to evaluate whether the introduction of the SPDR Gold Trust, iShares Silver Trust, ETFS Platinum Trust, ETFS Physical Palladium Shares, and ETFS Physical Copper had an impact on the return of the metals underlying those trusts, using monthly data from their inceptions until September 2012, Commission staff examined flows into these funds and subsequent changes in underlying prices over time.[133] This analysis revealed no observable relation between the flow of assets and subsequent price changes of the underlying metal prices.[134] Commission staff repeated this analysis on a daily frequency for iShares Silver Trust, ETFS Platinum Trust, ETFS Physical Palladium Shares, and ETFS Physical Copper.[135] Again, Commission staff found no evidence that fund flows were statistically related to subsequent changes in the underlying metals prices. Given the industrial usage of silver, platinum, and palladium as compared to copper,[136] the Commission believes that it is reasonable to project that any impact of the listing and trading of the Shares will not be meaningfully different from that of the listing and trading of shares of other commodity-based trusts due solely to the nature of the underlying commodity markets.

In connection with the proposed rule change, the Commission received one comment letter regarding the Commission staff's analysis.[137] This letter includes comments on both the substantive conclusions reached as well as the methodology used. As described further below, the Commission believes the staff's analysis reasonably evaluates whether historical price impacts are associated with changes in copper supply, one of the commenter's contentions.

The commenter states that the Granger causality analyses appear on their face to be incongruous.[138] The commenter asserts that Commission staff appears to be comparing assets under management to the respective price of the commodity held by the trust, and provides a chart that the commenter purports to show that there is a 92% correlation between the rolling monthly change in NAV of the iShares Silver Trust and the silver price.[139] The Granger causality analysis from Tables 1 and 2 of the RF Analysis examines the relation between dollar flows into the funds and subsequent changes in the prices of the underlying metals. It does not examine the relation between changes in assets under management, which are driven by both flows and returns of the underlying, and the concurrent change in the prices of the underlying metals. Therefore, the Commission believes that the relation between the change in NAV for these funds and the concurrent change in the prices of the underlying metal is irrelevant for the purposes of the cited analysis.

The commenter also asserts that the Commission staff should have examined alternative price variables in its analysis. The commenter suggests that Commission staff should have examined the cash to three month time spread and provides its own analysis, which the commenter concludes demonstrates a strong relationship between LME inventory changes and the cash to three month time spread.[140] The commenter states that if the iShares Trust and the JPM Copper Trust were to sell all of the

[128] *See* Memorandum to File, dated November 6, 2012, from the Division of Risk, Strategy, and Financial Innovation (''RF Analysis''). The RF Analysis was designed to look for evidence of price impact related to changes in copper inventory levels and fund flows.

[129] *See id.* at 10.

[130] *See id.* at 11.

[131] *See id.* The commenter asserts that Commission staff ''included likely heteroskedastic variables of other LME and LBMA metals prices in the regression, which may in the least, have undermined the cogency of the coefficient pertaining to LME copper inventory levels.'' *See* V&F November 16 Letter, *supra* note 6, at 1–2. There is no evidence in the record of the existence of heteroskedasticity in these variables that would affect the results of the RF Analysis.

[132] Granger causality is a statistical concept of causality that is based on prediction. If a signal X ''Granger-causes'' a signal Y, past values of X should contain information that helps predict Y above and beyond the information contained in past values of Y alone. *See* RF Analysis, *supra* note 128, at 3 n.9.

[133] *See id.* at 2–9. Because ETFS Physical Copper is small relative to the potential size of the Trust—holding only approximately 2,000 metric tons of copper as of August 2012—Commission staff augmented its analysis by comparing asset growth of SPDR Gold Trust, iShares Silver Trust, ETFS Platinum Trust, and ETFS Physical Palladium Shares with changes in spot prices for the underlying metals.

[134] *See id.* at 4.

[135] Daily asset data was not available for the SPDR Gold Trust within the Commission's existing data sources.

[136] *See supra* note 113.

[137] *See* V&F November 16 Letter, *supra* note 6.

[138] *See id.*

[139] *See id.* at 6–7.

[140] *See id.* at 3.

shares registered through their respective registration statements, the cash to three month time spread ''would blow out to a massive backwardation, potentially approaching record levels, making it impossible for copper consumers to finance their inventory.'' [141] The analysis provided by the commenter, however, does not provide the significance level of any test statistics associated with these findings, which would provide an assessment of the likelihood that relations were observed in the data by statistical chance. Without an assessment of statistical significance, it is difficult to conclude whether observed relations in the commenter's data are systematic or anecdotal. Furthermore, an assessment of the statistical significance of these results is not possible without knowing which alternative tests of the hypothesis were also examined and reported. The commenter did not provide any information about which alternative tests were examined, if any. In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices because such an analysis cannot distinguish whether price changes lead to inventory changes or vice versa.

Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery,[142] and believes that the commenter has not supported its prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.[143]

The commenter also states that Commission staff should have considered the impact on locational premia.[144] The commenter asserts that the relationship between COMEX inventory and locational premia in the U.S. is strong, and provides data that the commenter suggests shows that when COMEX inventories are at anemic levels, locational premia can be very high (above $200 per metric ton).[145] Thus, the commenter argues that if the Trust results in the removal of inventory from LME and COMEX warehouses, the associated market impact will be much higher locational premia.[146] The analysis provided by the commenter, however, does not provide the significance level of any test statistics associated with these findings.[147] In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices, as discussed previously.[148] In addition, according to data provided by the commenter, locational premia typically appear to be no greater than 2%.[149] Therefore, the Commission believes the degree to which such premia can be influenced is limited. Further, even assuming that copper was taken off LME warrant to be deposited into the Trust, the Commission believes that the Trust's copper will remain available for immediate delivery to consumers and participants in the physical markets,[150] which will limit the possible effect on locational premia.

The commenter also believes that Commission staff erred by using lagged daily LME stock data. The commenter asserts that because there are ''many consecutive and non-consecutive days that LME stock levels and LME traded metals do not change while LME prices do * * *, running a daily LME stock series through a regression analysis will yield statistically weak results in most cases.'' [151] The commenter states that LME inventory data for the prior day is released at 9:00 a.m. in the London trading day, thereby giving the market a full trading day to digest the data.[152] The lagged daily LME inventory change used in the RF Analysis in fact was regressed against the change in copper prices for the day on which this information was released at 9:00 a.m.[153]

In addition, the commenter asserts that there is not a strong statistical relationship between lagged copper inventories and contemporaneous copper prices because the LME represents the copper market's ''warehouse of last resort.'' [154] According to the commenter, when LME stocks are drawn down or added to, market participants ''should have already fully discounted the fundamental information contained within that particular stock move.'' [155] This assertion seems consistent with a hypothesis that price changes precede inventory changes, which is contrary to the commenter's assertions that inventory changes precede price changes.[156] The Commission believes that this argument provides further weight to the Commission staff's finding that the LME copper inventory changes do not appear to precede price changes. In sum, the Commission believes the daily periods used in the RF Analysis were reasonable and appropriate because evidence of the relationship between inventories and prices would likely be seen at daily intervals.[157]

[141] *See id.* The commenter further states that the mechanics of unit creation for commodity-based trusts backed by precious metals are fundamentally different than those for commodity-based trusts backed by industrial metals, citing the lack of copper in unallocated accounts that could be used in creating Shares. According to the commenter, neither producers nor consumers carry meaningful inventories of copper, which would require authorized participants to acquire copper from LME and COMEX inventories to create Shares. The commenter asserts that a backwardation would be necessary to trigger the movement of copper to authorized participants, and that consumers would have to compete for this metal or lend to authorized participants. *See id.* at 4.

[142] *See supra* Section III.A.

[143] *See supra* Section III.A.3.

[144] *See* V&F November 16 Letter, *supra* note 6, at 3, 5. The commenter refers to ''physical'' premia in describing the manner in which the Trust will value its copper holdings: ''Another market price that the SEC could have done well to look into is the physical premia, especially in light of the [Trust's] implied objective to value metal . . . on an in-situ basis, taking into account regional physical price variations.'' *See id.* at 5. Consistent with this description, the Commission refers to locational premia rather than physical premia. The Trust will value its copper using the LME Bid Price, and unlike the JPM Copper Trust, will not take into account locational premia. *See infra* note 216.

[145] *See* V&F November 16 Letter, *supra* note 6, at 3, 5.

[146] *See id.*

[147] *See supra* text following note 141.

[148] *See supra* text following note 141.

[149] *See* V&F August 24 Letter, *supra* note 6, at 11–12. The data provided relates to locational premia for warehouses that would be used to store copper held in the JPM Copper Trust, which are different from the warehouses that would be used by the iShares Trust. As the locational premia provided do not reflect all of the cities in which the iShares Trust's warehouses will be located, the Commission evaluated the data only to understand the significance of locational premia as compared to copper prices.

[150] *See supra* text accompanying note 94.

[151] *See* V&F November 16 Letter, *supra* note 6, at 2.

[152] *See id.* at 5–6.

[153] To confirm this, Commission staff reconciled a sample of historical LME stock data from the LME Web site (*http://www.lme.com/dataprices.asp*) and the Bloomberg LME stock data used in the RF Analysis. Additional reconciliation was done against historical LME copper warehouse stock data found at *http://www.metalprices.com/historical/database/copper/lme-copper-warehouse-stocks*.

[154] *See* V&F November 16 Letter, *supra* note 6, at 6.

[155] *See id.* (stating that LME stocks are drawn down by consumers because neither producers nor traders have material to sell to consumers and consumers are willing to go through the logistical hassle of being long LME warrants, swapping the warrants for their preferred brands, and transporting the copper to their individual plant, and that ''[i]t is nonsensical to assume that the trading community has not already discounted this information into the LME price''). *But see id.* at 2 (''Intuitively it doesn't make sense to argue that in a physically settled exchange system that fungible stock levels don't exert some statistically robust influence on metals prices.'').

[156] *See supra* notes 115–120 and accompanying text.

[157] In particular, LME inventory data for the previous day is released on the morning of each trading day so that prices are able to react over the course of that day. Moreover, the use of the monthly lag period confirmed the results of the daily

The commenter suggests that, instead of looking at lagged daily LME stock data, the Commission staff should have looked at the 30 largest quarter-to-quarter LME inventory declines against changes in the LME cash price over the same time periods. The commenter asserts that such analysis, which the commenter submitted, shows that for the 30 largest observations, the median stock decline was 28.6%, and that the LME cash price rose in 25 out of 30 observations, for a median increase of 10.5%.[158] The commenter states that these findings suggest that if LME and COMEX inventories were to decline by more than 50%, which the commenter asserts could happen if the iShares Trust and the JPM Copper Trust were to sell all of the shares registered through their respective registration statements, prices could increase 20–60% in the quarter that the LME and COMEX inventory decline occurs.[159]

The analysis provided by the commenter, however, does not provide the significance level of any test statistics associated with these findings.[160] In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices.[161] Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery,[162] and believes that the commenter has not supported his prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.[163]

Finally, the commenter asserts that the listing and trading of the Shares could change the fundamental structure of the copper market, and that Commission staff should ''ponder'' such a structural change in the copper market.[164] The commenter states that the ex-post implications for copper outright prices in a market that involves listing and trading of the Shares cannot be accurately inferred from what the commenter characterizes as ''an overly-simplistic ex-ante statistical analysis of LME/global inventories and LME settlement prices.'' [165] According to the commenter, never before has it been possible for financial players to ''lock up'' significant amounts of LME and COMEX inventory in a short period of time and remove that copper from the market.[166] Further, while the commenter indicates that ''[o]verall *historically* the level of LME inventories has been generally indicative of the trading environment, not a driver of the metal price per se,'' the commenter believes creation of the Trust could change the role of LME inventories from being a function of the fundamentals to being a fundamental, and ''arguably THE fundamental, as has become the case in precious metals.'' [167]

The Commission believes that such assertions are speculative and unsupported by the record. As discussed in detail throughout this order, the Commission does not believe that the listing and trading of the Shares is likely to alter the supply and demand fundamentals of the copper market. Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery [168] and, even assuming that copper was taken off LME warrant to be deposited into the Trust, the Commission believes that the Trust's copper will remain available for immediate delivery to consumers and participants in the physical markets.[169]

Because the Commission does not believe that the listing and trading of the Shares, by itself, will increase the price of copper, the Commission also believes that approval of the proposed rule change will not have an adverse effect on the efficiency of copper allocation for industrial uses and will also not have an adverse effect on capital formation for industrial uses of copper.

C. The Trust's Impact on Copper Price Volatility

The commenter asserts that the successful creation and growth of the Trust would make the price of copper, which the commenter states already is volatile, even more volatile.[170] Specifically, the commenter asserts that the successful creation and growth of the Trust, which the commenter believes would substantially restrict supply and increase copper prices, would create a boom and bust cycle in copper prices.[171] The commenter predicts that this ultimate sell-off would be quick, and that the expected ''dumping'' of thousands of metric tons of copper back onto the market would depress the price of copper and negatively impact the world economy at large.[172]

In contrast, the Sponsor asserts that it would be difficult to predict the impact of the introduction of an exchange-traded vehicle backed by physical copper on price volatility given that many variables exist.[173] The Sponsor asserts that the arguments presented in the Levin Letter based on research reports and hearing testimony related to futures and other derivative-based instruments do not demonstrate that an exchange-traded vehicle backed by physical copper would contribute to price volatility.[174] Further, the Sponsor believes that ''the physical-backed nature of the Trust may in fact reduce price volatility as the Trust may take up excess supply during times when the market is oversupplied and provide an inventory of metal ready for delivery

analysis and allowed for the examination of the effect of non-exchange copper inventories for which only monthly data were available within the Commission's existing data sources.

[158] *See* V&F November 16 Letter, *supra* note 6, at 2.

[159] *See id.*

[160] *See supra* text following note 141.

[161] *See supra* text following note 141.

[162] *See supra* Section III.A.

[163] *See supra* Section III.A.3.

[164] *See* V&F November 16 Letter, *supra* note 6, at 3–4.

[165] *See id.* at 4.

[166] *See id.* at 3–4, 8.

[167] *See id.* at 6 (emphasis in original). The commenter states that exchange-traded vehicles backed by silver, platinum, and palladium have become the largest single holder of those metals in a remarkably short period of time (less than eight years) and that exchange-traded vehicles backed by gold are eclipsed at a national level only by the U.S. and Germany. According to the commenter, while the cumulative impact of exchange-traded vehicles on prices has dissipated as these products have matured, ''the reality is that they have become a key fundamental in terms of analyzing the precious metals markets,'' and have become the main asset class. *See id.* at 7. The commenter asserts that it is not certain, and that it should not be assumed, that potential investors in the Trust will ''be as sticky as they have been in gold and silver, and to a lesser degree in platinum and palladium.'' *See id.* The commenter's ''stickiness'' argument has been addressed above. *See supra* Section III.A.1.

[168] *See supra* Section III.A. Even assuming that the Trust's copper will be unavailable for immediate delivery, the Commission believes that the commenter has not supported his prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery. *See supra* Section III.A.3.

[169] *See supra* text accompanying note 94.

[170] *See* V&F May 9 Letter, *supra* note 6, at 5.

[171] *See id. But see* V&F November 16 Letter, *supra* note 6, at 8 (stating that if Commission staff were to analyze whether the discrete flow of ounces in and out of exchange-traded vehicles drives underlying metals price, it would likely show that volatility in precious metals is not solely a function of net metal flow in and out of the exchange-traded vehicles). The commenter cites to a statement in the Registration Statement to argue that the Sponsor admits that this boom and bust cycle may occur. *See* V&F July 18 Letter, *supra* note 4, at 4 (citing Registration Statement, *supra* note 15, at 10).

[172] More specifically, the commenter states that, because of this predicted boom and bust, mines will go bust and resources will be needlessly misallocated. *See* V&F August 24 Letter, *supra* note 6, at 28.

[173] *See* BlackRock Letter, *supra* note 6, at 5. *See also* supra text accompanying note 123 (discussing the Sponsor's view of the variables that can impact price volatility).

[174] *See* BlackRock Letter, *supra* note 6, at 5–6.

during times when the market is in a shortage.'' [175]

The commenter's prediction that the listing and trading of the Shares would cause a boom and bust is premised upon both the supply and price impacts he predicts. As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery [176] or increase the price of copper.[177] In addition, this boom and bust prediction is unsupported by any empirical evidence. As a result, the Commission does not believe that the proposed listing and trading of the Shares will impact copper volatility in the manner that the commenter suggests. Further, the Commission does not believe that approval of the proposed rule change will impede the use of copper because the listing and trading of the Shares is not expected to, as discussed above, result in heightened volatility. Therefore, the Commission does not believe that the listing and trading of the Shares will have an adverse effect on the efficiency of copper allocation and capital formation.

D. The Trust's Impact on the Potential to Manipulate the Price of Copper

The commenter sets forth a number of arguments about why the Trust would increase the potential for manipulation of the copper market. The commenter asserts that the Trust, in effect, would introduce so much transparency into the copper market that it would allow the Trust to manipulate, or alternatively provide market participants an effective means to manipulate, the price of copper and thereby the price of the Shares.[178] According to the commenter, investors in the Trust would be able to measure how much impact their collective removal of copper from the supply available for immediate delivery would have on copper prices each day, and could adjust their purchasing strategies accordingly.[179] Therefore, the commenter argues that the increased market transparency would not be in the public interest.[180] Instead, the commenter believes the transparency of the Trust's holdings would provide market participants with critical information about ''how much copper needs to be removed on any given day in order to artificially inflate [copper] prices and thus the price of the Trust's shares.'' [181]

The commenter also predicts that the Trust would make the copper market more susceptible to squeezes and corners by reducing the supply of copper available for immediate delivery.[182] According to the commenter, after a substantial portion of the copper market is deposited in one or more physical copper trusts, the costs of acquiring the remaining inventory would be relatively inexpensive, thus reducing a hurdle to engineering a corner or squeeze.[183] The Levin Letter, which the commenter attached to the V&F July 18 Letter, also states that such manipulative activities could go undetected by the LME because trusts that hold physical commodities are not subject to any form of commodity regulations; by holding physical copper rather than LME warrants, the Trust would be able to control more of the available supply of copper without triggering LME reporting or rules.[184]

The Sponsor does not believe that the presence of the Trust would increase the likelihood of market squeezes because in the Sponsor's view: (1) market squeezes have been occurring in the markets since long before the introduction of commodity-based trusts; (2) no evidence has been presented to show that the introduction of the Trust will contribute to a market squeeze; (3) current investors in the physical copper markets, which the Sponsor expects will be the most likely investors in the Trust, are not '''speculators in the guise of purchasers' seeking to create a squeeze on the copper market;'' (4) incremental demand from new investors will broaden the investor base in copper, which could reduce the possibility of collusion among market participants to manipulate the copper market; and (5) trading in the Shares would be overseen by the Exchange and the Commission, while the CFTC would police for manipulation in the underlying copper market.[185]

The Sponsor also identifies a number of features of the Trust designed to meet the requirements of Section 6(b)(5) of the Act.[186] Specifically, the Sponsor states that ''[t]he Trust offers complete transparency through its Web site, where information on the Trust's copper holdings as well as additional detailed data regarding the Trust will be available.'' [187] In addition, the Trust will provide daily valuations of the Trust's copper based on that day's announced LME Bid Price.[188] The Sponsor also expects the Trust's arbitrage mechanism will facilitate the correction between the Share price and the price of the Trust's copper.[189]

The Sponsor also argues ''that the physical copper market is no more susceptible to manipulation than other existing commodity markets, particularly given the[] many layers of regulatory oversight.'' [190] The Sponsor states that (1) trading in the Shares would be subject to the oversight of both NYSE Arca and the Commission, and (2) manipulation of physical copper would be subject to the oversight jurisdiction and enforcement authority of the CFTC.[191] The Sponsor also asserts the introduction of exchange-traded vehicles backed by other metals ''has not led to any credible evidence of an increase in manipulation of the markets for their underlying metals.'' [192]

[175] *See id.* at 6.

[176] *See supra* Section III.A.

[177] *See supra* Section III.B.

[178] *See* V&F May 9 Letter, *supra* note 6, at 9–10.

[179] *See id.* at 9.

[180] *See id.* at 10.

[181] *See* V&F July 13 Letter, *supra* note 6, at 10. The commenter also states that anyone who knows that market participants are buying LME warrants to create Shares could front-run the creation by buying Shares on the Exchange and profit thereby. *See* V&F September 12 Letter, *supra* note 6, at 9. The profitability of such action appears premised upon the commenter's belief that the creation of Shares will cause the LME Bid Price, and correspondingly the price of the Shares, to increase. As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery, which is what the commenter predicts would cause the price of copper to increase. *See supra* Section III.B. With respect to other types of front-running, the Exchange's surveillance program for the Trust, which is designed in part to identify and deter manipulative activity, is described in Section III.E.

[182] *See* V&F May 9 Letter, *supra* note 6, at 1, 10. The Levin Letter, which the commenter attached to the V&F July 18 Letter, describes a squeeze on the copper market as occurring ''when a lack of supply and excess demand forces the price upward, and a corner is when one party acquires enough copper to be able to manipulate its price.'' Levin Letter, *supra* note 6, at 7. Senator Levin asserts that the Trust will make the copper market more susceptible to squeezes because it could be used by market participants to remove copper from the available supply in order to artificially inflate the price. *See id.* at 7.

[183] *See* V&F September 10 Letter, *supra* note 6, at 7. The commenter also suggests that mere launch of the Trust could create a corner and squeeze given the relatively small amount of copper on LME warrant.

[184] *See* Levin Letter, *supra* note 6, at 7.

[185] *See* BlackRock Letter, *supra* note 6, at 6.

[186] 15 U.S.C. 78f(b)(5).

[187] *See* BlackRock Letter, *supra* note 6, at 9. More specifically, the Trust will disclose on its Web site: (1) for each copper lot held by the Trust, the warehouse location, warehouse identification number, lot number, net weight, and brand; and (2) the order in which lots will be delivered to redeeming authorized participants pursuant to the algorithm. *See* Amendment No. 2, *supra* note 9. *See also* notes 27–28 and accompanying text (describing the Trust's redemption procedure).

[188] *See* BlackRock Letter, *supra* note 6, at 10.

[189] *See id.*

[190] *See id.* at 6.

[191] *See id.*

[192] *See id.* While the commenter states that ''traders and investors have sought to manipulate silver on at least two occasions,'' the commenter does not identify any instances of manipulation tied

The Commission does not believe that the listing and trading of the Shares is likely to increase the likelihood of manipulation of the copper market and, correspondingly, of the price of the Shares. Generally, the Commission believes that increased transparency helps mitigate risks of manipulation. For example, in approving the listing and trading of shares of the iShares Silver Trust, the Commission stated that the dissemination of information about the silver shares would ''facilitate transparency with respect to the Silver Shares and diminish the risk of manipulation or unfair informational advantage.'' [193] In this case, the Commission believes the transparency that the Trust will provide with respect to its holdings,[194] as well as the dissemination of quotations for and last-sale prices of transactions in the Shares and the IIV and NAV of the Trust,[195] all are expected to help reduce the ability of market participants to manipulate the physical copper market or the price of Shares.[196] Also, the Commission believes that the listing and trading of the Shares on the Exchange (and any other national securities exchange that trades the Shares pursuant to unlisted trading privileges) [197] may serve to make the overall copper market more transparent if OTC trading of unreported warehouse receipts shifts to trading Shares on exchanges.[198] In particular, additional information regarding the supply of copper will be disseminated, which will enable users of copper to make better-informed decisions. Over the long term, this additional transparency could enhance efficiency in the market for copper and capital formation for participants in this market. In addition, the Commission believes that the listing and delisting criteria for the Shares are expected to help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares.[199]

The commenter asserts that serious disruptions in the supply of copper would make corners and squeezes more likely.[200] As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.[201] Depending on the size of the Trust though, it is possible that copper holdings may be dispersed across an additional market—*i.e.,* less copper may be held under LME and/or COMEX warrant and more copper may be held by the Trust. However, the availability of inter-market arbitrage is expected to help mitigate any potential increase in the ability of market participants to engage in corners or squeezes as a result of any dispersion of copper holdings across markets (as distinguished from a reduction in the copper supply). For example, if the Trust grows large relative to the market for warrants on the LME, LME market participants faced with a potential corner or squeeze may acquire Shares, redeem them (through an authorized participant) for LME warrants, and deliver the warrants.[202] Further, although the Exchange currently provides for the listing and trading of shares of commodity-based trusts backed by physical gold, silver, platinum, and palladium, the commenter has not identified any evidence that the trading of shares of these commodity-based trusts has led to manipulation of the gold, silver, platinum, or palladium markets.

For the reasons discussed above, the Commission does not believe that the proposed listing and trading of the Shares is likely to render the copper market or the price of the Shares more susceptible to manipulation. Correspondingly, the Commission does not believe that approval of the proposed rule change will impose any burden on competition between participants in the market for copper as it will not provide market participants a greater opportunity to achieve an unfair competitive advantage.

E. Surveillance

The commenter questions whether NYSE Arca's surveillance procedures are adequate to prevent fraudulent and manipulative trading in the Shares. According to the commenter, NYSE Arca's surveillance procedures are not adequate because they are the kind of ''garden-variety measures'' that are always in place to prevent collusion and other forms of manipulation by traders.[203]

NYSE Arca states that its surveillance procedures will be adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[204] In particular, the Exchange represents the following:

- Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares must file with the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the

to exchange-trade vehicles. Nonetheless, the commenter asserts that ''[f]undamentally the copper market is much easier to manipulate'' based on its reasoning, discussed above. *See* V&F September 12 Letter, *supra* note 6, at 8.

[193] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967, 14975 (March 24, 2006) (approving the listing and trading of shares of the iShares Silver Trust).

[194] *See supra* note 187 and accompanying text.

[195] *See supra* notes 31–36 and accompanying text.

[196] Further, the Trust is a passive vehicle, and therefore the commenter's concerns about manipulation by the Trust itself are misplaced.

[197] When a national securities exchange extends ''unlisted trading privileges'' to a security, it allows the trading of a security that is not listed and registered on that exchange. *See* Securities Exchange Act Release No. 35637 (April 24, 1995), 60 FR 20891, 20891–92 (April 28, 1995) (adopting rules to reduce the period that exchanges have to wait before extending unlisted trading privileges to any listed initial public offering security). A number of national securities exchanges have rules that allow the extension of unlisted trading privileges to issues such as the Shares. *See, e.g.,* Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR–Phlx–2008–34); Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR–BATS–2008–004).

[198] Market participants that acquire a large percentage of the Shares must identify themselves to the Commission by filing Schedules 13D or 13G. *See* 17 CFR 240.13d–1. Specifically, Section 13(d) of the Act, 15 U.S.C. 78m(d), and the rules thereunder require that a person file with the Commission, within ten days after acquiring, directly or indirectly, beneficial ownership of more than five percent of a class of equity securities, a disclosure statement on Schedule 13D, subject to certain exceptions. *See* 17 CFR 240.13d–1. Section 13(g) and the rules thereunder enable certain persons who are the beneficial owners of more than five percent of a class of certain equity securities to instead file a short form Schedule 13G, assuming certain conditions have been met. Beneficial owners are also required to report changes in the information filed.

In addition, Section 13(f)(1) of the Act and Rule 13f–1 thereunder require every ''institutional investment manager,'' as defined in Section 13(f)(5)(A) of the Act, that exercises investment discretion with respect to ''section 13(f) securities,'' as defined in Rule 13f–1, having an aggregate fair market value of at least $100 million (''Reportable Securities''), to file with the Commission quarterly reports on Form 13F setting forth each Reportable Security's name, CUSIP number, the number of shares held, and the market value of the position.

[199] For example, under NYSE Arca Equities Rule 8.201(e)(2)(ii), the Exchange will consider suspending trading in the Shares or delisting the Shares if, following the initial 12-month period following commencement of trading, there are fewer than 50,000 Shares issued and outstanding.

[200] *See supra* notes 182–184 and accompanying text.

[201] *See supra* Section III.A. Similarly, the Commission has recently stated that it does not believe that the listing and trading of shares of the JPM Copper Trust is likely to disrupt the supply of copper available for immediate delivery. *See* JPM Order, *supra* note 6, 77 FR 75468, 75474.

[202] *See supra* notes 80–82 and accompanying text.

[203] *See* V&F May 9 Letter, *supra* note 6, at 10.

[204] *See* Notice, *supra* note 3, 77 FR at 38360. The Exchange also states that its existing surveillances will be augmented with a product-specific review designed to identify potential manipulative trading activity through the use of the creation and redemption process. *See* Amendment No. 1, *supra* note 7.

Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by NYSE Arca Equities Rule 8.201.

- In addition, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying copper, copper futures contracts, options on copper futures, or any other copper derivative, through ETP Holders acting as registered Market Makers, in connection with their proprietary or customer trades that they effect on any relevant market.[205]
- NYSE Arca has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business.[206]
- With respect to a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.[207]
- Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker in the Shares, and its affiliates, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).[208]
- NYSE Arca may obtain trading information via ISG from other exchanges that are members of the ISG, including the COMEX.[209] The Exchange also states that it has entered into a comprehensive surveillance sharing agreement with LME that applies to trading in copper and copper derivatives.[210]

Further, in the context of preventing fraudulent and manipulative acts, the Exchange discusses its authority to halt trading in the Shares in the interest of promoting a fair and orderly market and protecting the interests of investors.[211]

In addition, NYSE Arca has obtained a representation from the Sponsor that it will: (1) Implement a firewall with respect to its affiliates regarding access to material non-public information of the Trust concerning the Trust and the Shares; and (2) will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares.[212] The Commission believes the firewall that the Exchange will require the Sponsor to erect is a reasonable measure to help prevent the flow of non-public information to the Sponsor's affiliates.[213]

More generally, based on the Exchange's representations, the Commission believes that the Exchange's surveillance procedures appear to be reasonably designed to permit the Exchange to monitor for, detect, and deter violations of Exchange rules and applicable federal securities laws and rules.[214] In addition to all of the same surveillance procedures employed with respect to the trading of all other Commodity-Based Trust Shares, NYSE Arca states that a new product-specific review will be employed to monitor trading in the Shares to identify potential manipulative trading activity through the use of the creation and redemption process.[215] The commenters have not identified any specific deficiency in the proposed procedures or provided any evidence that the Exchange's surveillance program has been ineffective with respect to trading in other Commodity-Based Trust Shares.

F. Dissemination of Information About the Shares and Copper

The Commission believes the proposal is reasonably designed to promote sufficient disclosure of information that may be necessary to price the Shares appropriately. Specifically, the Commission believes that dissemination of the NAV, IIV, and copper holdings information, as discussed above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage.[216]

Further, as noted above, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association, and the Exchange will make available via the Consolidated Tape trading volume, closing prices, and NAV for the Shares from the previous day.[217] Additionally, as discussed above, the Exchange has identified numerous sources of copper price information unconnected with the Exchange that are readily available to

[205] *See* Notice, *supra* note 3, 77 FR at 38360. *See also* Arca September 14 Letter, *supra* note 6, at 2–3.

[206] *See* Amendment No. 1, *supra* note 7.

[207] *See id.*

[208] *See* Notice, *supra* note 3, 77 FR at 38360. *See also* Arca September 14 Letter, *supra* note 6, at 3.

[209] *See* Notice, *supra* note 3, 77 FR at 38360.

[210] *See id.*

[211] *See* Arca September 14 Letter, *supra* note 6, at 3 (''As stated in the Notice, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares, and trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.'').

[212] *See* Amendment No. 1, *supra* note 7.

[213] Further, NYSE Arca represents that it can obtain information about the activities of the Sponsor and its affiliates under the Exchange's listing rules. *See* Amendment No. 1, *supra* note 7.

[214] The Commission has discussed above in Section III.D other reasons why it believes that the listing and trading of the Shares as proposed is unlikely to increase the likelihood of manipulation of the copper market and, correspondingly, of the price of the Shares.

[215] *See* Amendment No. 1, *supra* note 7.

[216] *See supra* notes 193–198 and accompanying text. The commenter asserts that, because the Trust will be valued using the LME Bid Price without taking into account locational premia, under certain circumstances, the NAV of the Trust may not be accurate. *See* V&F September 12 Letter, *supra* note 6, at 7–8. The commenter asserts that the values of LME-traded industrial metals are determined by their location, and that the LME Bid Price is the value of copper at the cheapest-to-deliver location. *See id.* The commenter predicts that, if the Trust accumulates all of the metal from LME warehouses in the cheapest-to-deliver location, then the cheapest-to-deliver location will change, and correspondingly the LME Bid Price will be based on a new location. *See id.* In that circumstance, the commenter argues, there may be a significant divergence between the NAV of the Trust and the actual value of the Trust's copper. *See id.* at 7–8.

The Sponsor states that the Trust does not assign locational premia because any warrant, regardless of location, can be delivered at the LME Bid Price, and further asserts that this valuation method will allow an authorized participant to effectively reconcile its position in copper. *See* BlackRock Letter, *supra* note 6, at 9.

The Commission believes that the use of the LME Bid Price to value the Trust's copper may lead to a divergence between the NAV of the Trust and the market value of the Trust's copper because the LME Bid Price is used to value the Trust's copper and the Trust's copper may not be in the cheapest-to-deliver location. The Commission does not expect any possible divergence to cause any problems with respect to trading in the Shares, and notes that the commenter did not assert it would. The Commission believes that the degree of divergence will be limited to the difference in the price of copper held by the Trust and the price of copper at the cheapest-to-deliver location. The Commission notes that the Trust will disclose on its Web site the location, warehouse identification number, lot number, net weight of the lot, and brand of each lot of copper it holds, as well as the order in which all lots will be delivered to redeeming authorized participants. *See* Amendment No. 2, *supra* note 9.

[217] *See supra* text accompanying notes 31–32.

investors.[218] The Commission therefore believes that sufficient venues for obtaining reliable copper pricing information exist to allow investors in the Shares to adequately monitor the price of copper and compare it to the NAV of the Shares.

G. Listing and Trading of the Shares

The Commission believes that the Exchange's proposed rules and procedures for the listing and trading of the Shares are consistent with the Act. For example, the Commission believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. As detailed above, NYSE Arca Equities Rules 7.34(a)(5) and 8.201(e)(2) respectively provide that: (1) If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants; [219] and (2) the Exchange will consider suspension of trading if, after the initial 12-month period following commencement of trading: (a) the value of copper is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated source providing that value; or (b) if the IIV is no longer made available on at least a 15-second delayed basis.[220] In addition, the Exchange's general authority to halt trading because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, also will advance this objective. Further, trading in the Shares will be subject to NYSE Arca Equities Rule 7.12, the Exchange's circuit breaker rule, which governs trading halts caused by extraordinary market volatility.

Further, the Shares will be subject to Exchange rules governing the responsibilities of market makers and customer suitability requirements. In addition, the Shares will be subject to Exchange Rule 8.201 for initial and continued listing of Shares.[221] As discussed above,[222] the Commission believes that the listing and delisting criteria for the Shares are expected to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. The Commission also believes that the Information Bulletin will adequately inform members and member organizations about the terms, characteristics, and risks of trading the Shares.

H. Commission Findings

After careful review, and for the reasons discussed in Sections III.A–G above, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,[223] and the rules and regulations thereunder applicable to a national securities exchange.[224] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[225] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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; with Section 6(b)(8) of the Act,[226] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act; and with Section 11A(a)(1)(C)(iii) of the Act,[227] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[228]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendments No.1 and No. 2 to the proposed rule change are 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–NYSEArca–2012–66 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–NYSEArca–2012–66. 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal offices of the Exchanges. 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–NYSEArca–2012–66 and should be submitted on or before March 21, 2013.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendments No. 1 and No. 2

As discussed above, the Exchange submitted Amendment No. 1 to make additional representations regarding the Exchange's surveillance program,[229] and

[218] *See* Notice, *supra* note 3, 77 FR at 38358–59.

[219] *See id.* at 38359.

[220] Additionally, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the of the trading day following the interruption. *See id.*

[221] *See id.*

[222] *See supra* note 199 and accompanying text.

[223] 15 U.S.C. 78f.

[224] This approval order is based on all of the Exchange's representations.

[225] 15 U.S.C. 78f(b)(5).

[226] 15 U.S.C. 78f(b)(8).

[227] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[228] As noted above, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association, and the Exchange will make available via the Consolidated Tape trading volume, closing prices, and NAV for the Shares from the previous day. *See supra* text accompanying notes 31–32.

[229] *See supra* note 7.

submitted Amendment No. 2 to supplement representations regarding Web site disclosure of the Trust's copper holdings.[230] The Commission believes these additional representations are, among other things, useful to help assure adequate information is available to the Exchange to support its monitoring of Exchange trading of the Shares in all trading sessions; to help the Exchange deter and detect violations of NYSE Arca rules and applicable federal securities laws; and to help assure adequate availability of information to support the arbitrage mechanism. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[231] for approving the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[232] that the proposed rule change (SR–NYSEArca–2012–66), as modified by Amendments No. 1 and No. 2, be, and hereby is, approved on an accelerated basis.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04623 Filed 2–27–13; 8:45 am]

BILLING CODE 8011–01–P

[230] *See supra* note 9.

[231] 15 U.S.C. 78s(b)(2).

[232] 15 U.S.C. 78s(b)(2).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13473 and # 13474]

Arkansas Disaster Number AR–00061

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of ARKANSAS (FEMA–4100–DR), dated 01/29/2013.

Incident: Severe Winter Storm.

Incident Period: 12/25/2012 through 12/26/2012.

Effective Date: 02/14/2013.

Physical Loan Application Deadline Date: 04/01/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 10/29/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of ARKANSAS, dated 01/29/2013, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Clark.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–04441 Filed 2–27–13; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0311]

BB&T Capital Partners Mezzanine Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that BB&T Capital Partners Mezzanine Fund II, L.P., 101 N. Cherry Street, Suite 700, Winston-Salem, NC 27101, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). BB&T Capital Partners Mezzanine Fund II, L.P. proposes to provide debt financing to Marketplace Events, LLC, 31300 Solon Road, Solon, OH 44139 (''Marketplace Events''). The proceeds will be used to recapitalize the company.

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because portions of the financing will be used to return capital and repay obligations to BB&T Capital Partners/Windsor Mezzanine Fund, LLC, an Associate of the Licensee and this transaction is considered Financing an Associate and Providing Financing to discharge an obligation to an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: February 20, 2013.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2013–04464 Filed 2–27–13; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 8202]

60-Day Notice of Proposed Information Collection: Repatriation/Emergency Medical and Dietary Assistance Loan Application

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to April 29, 2013.

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: mailto:Ask-OCS–L-Public-Inquiries@state.gov*.
- *Mail:* (paper, disk, or CD–ROM submissions): U.S. Department of State, CA/OCS/L, SA–29, 4th Floor, Washington, DC 20037–3202.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/L, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037–3202.

You must include the DS form number (if applicable), information collection title, and OMB control number (1405–0150) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional

information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20037–3202, who may be reached at *mailto: Ask-OCS-L-Public-Inquiries@state.gov*.

SUPPLEMENTARY INFORMATION:

Title of Information Collection: Repatriation/Emergency Medical and Dietary Assistance Loan Application.

- *OMB Control Number:* 1405–0150.
- *Type of Request:* Revised.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–3072.
- *Respondents:* U.S. Citizens applying for emergency loan assistance.
- *Estimated Number of Respondents:* 1,357.
- *Estimated Number of Responses:* 1,357.
- *Average Hours per Response:* 20 minutes.
- *Total Estimated Burden:* 452 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection: The principal purpose of the information gathered is to provide an accurate list of U.S. citizens and non-U.S. citizens receiving repatriation/emergency medical and dietary assistance in foreign countries. The information collected will be used to process the emergency loan, facilitate reception and resettlement assistance in the United States and for debt collection. Respondents are private U.S. citizens and their dependents abroad that are destitute and in need of repatriation to the United States; private U.S. citizens and their dependents abroad who are in need of emergency medical and dietary. 22 U.S.C. 2670(j) is one of the primary statutes that make the use of the DS–3072 legal.

Methodology: The Bureau of Consular Affairs will be posting this form on Department of State Web sites to give respondents the opportunity to fill the form out online or print out the form and fill it out manually and submit the form in person or by fax or mail.

Dated: February 14, 2013.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. 2013–04474 Filed 2–27–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8207]

Department of State FY11 Service Contract Inventory

AGENCY: Department of State.

ACTION: Notice of the release of the Department of State FY11 Service Contract Inventory.

SUMMARY: The Department of State has publically released its Service Contract Inventory for FY12 and its analysis of the FY11 inventory. They are available here: *http://csm.state.gov/content.asp?content_id=135&menu_id=71*.

Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, requires Department of State, and other civilian agencies, to submit an annual inventory of service contracts. A service contract inventory is a tool to assess an agency in its ability to contract services in support of its mission and operation and whether the contractors' skills are being utilized in an appropriate manner.

DATES: The FY12 inventory and FY11 analysis is available on the Department's Web site as of February 22, 2013.

FOR FURTHER INFORMATION CONTACT: Carla Linder, Director (Acting), A/CSM, 703–875–5114, *LinderCE@state.gov*.

Dated: February 22, 2013.

Carla E. Linder,

Director (Acting), A/CSM, Department of State.

[FR Doc. 2013–04716 Filed 2–27–13; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Requirements for the Recognizing Aviation and Aerospace Innovation in Science and Engineering (RAISE) Award

AGENCY: Office of the Secretary, U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: Pursuant to a recommendation by the Future of Aviation Advisory Committee, the Secretary of Transportation, through the Assistant Secretary for Aviation & International Affairs, is announcing the second-annual competition to recognize students with the ability to demonstrate unique, innovative thinking in aerospace science and engineering. With this award, the Secretary of Transportation intends to provide an incentive for participants at high schools, colleges, and universities to think creatively to develop innovative solutions to aviation and aerospace issues, and to share those innovations with the broader community.

DATES: Effective February 27, 2013 to July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Patricia Watts, Ph.D., Federal Aviation Administration, (609) 485–5043, *patricia.watts@faa.gov,* or James Brough, Federal Aviation Administration, (781) 238–7027, *james.brough@faa.gov.*

SUPPLEMENTARY INFORMATION:

Award Approving Official: Ray LaHood, Secretary of Transportation.

Subject of Challenge Competition: The Secretary's RAISE (Recognizing Aviation & Aerospace Innovation in Science and Engineering) Award will recognize innovative scientific and engineering achievements that will have a significant impact on the future of aerospace or aviation. The award is open to students at the high school, undergraduate, and graduate levels. The Secretary of Transportation (''the Secretary'') has designated the Assistant Secretary of Aviation & International Affairs as the Award Review Board Chair and, following an open solicitation by the United States Department of Transportation (''the Department''), the Assistant Secretary will submit nominations to the Secretary for final consideration. The rules for this competition will be available at *http://www.challenge.gov.*

Eligibility

To be eligible to participate in the Secretary's RAISE Award competition, students must be U.S. citizens or

permanent residents and must have been enrolled for at least two semesters at a high school (or equivalent approved home school program), college, or university. Students may participate and be recognized as individuals or in groups. Each member of a team must meet the eligibility criteria. An individual may join more than one team. There is no charge to enter the competition.

Candidates shall submit a project in the competition under the rules promulgated by the Department;

The following additional rules apply:

1. Candidates shall agree to execute indemnifications and waivers of claims against the Federal government as provided in this Notice;

2. Candidates may not be a Federal entity or Federal employee acting within the scope of employment;

3. Candidates may not be an employee of the Department, including but not limited to the Federal Aviation Administration, or the Research and Innovative Technology Administration;

4. Candidates shall not be deemed ineligible because an individual used Federal facilities or consulted with Federal employees during a competition, if the facilities and employees are made available to all individuals participating in the competition on an equitable basis;

5. The competition is subject to all applicable Federal laws and regulations. Participation constitutes the Candidates' full and unconditional agreement to these rules and to the Secretary's decisions, which are final and binding in all matters related to this competition;

6. Submissions which in the Secretary's sole discretion are determined to be substantially similar to a prior submitted entry may be disqualified;

7. Submissions must be original, be the work of the Candidates, and must not violate the rights of other parties. All submissions remain the property of the applicants. Each Candidate represents and warrants that he, she, or the team, is the sole author and owner of the submission, that the submission is wholly original, that it does not infringe any copyright or any other rights of any third party of which the Candidate is aware, and, if submitted in electronic form, is free of malware;

8. By submitting an entry in this contest, contestants and entrants agree to assume any and all risks and waive any claims against the Federal Government and its related entities (except in the case of willful misconduct) for any injury, death, damage, or loss of property, revenue or profits, whether direct, indirect, or consequential, arising from their participation in this contest, whether the injury, death, damage, or loss arises through negligence of otherwise. Provided, however, that by registering or submitting an entry, contestants and entrants do not waive claims against the Department arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential information of the entrant;

9. The Secretary and the Secretary's designees have the right to request access to supporting materials from the Candidates;

10. The submissions cannot have been submitted in the same or substantially similar form in any previous Federally-sponsored promotion or contest of any kind;

11. Each Candidate grants to the Department, as well as other Federal agencies with which it partners, the right to use names, likeness, application materials, photographs, voices, opinions, and/or hometown and state for the Department's promotional purposes in any media, in perpetuity, worldwide, without further payment or consideration; and

12. The Secretary collects personal information from Candidates when they enter this competition. The information collected is subject to the ChallengePost privacy policy located at *http://www.challengepost.com/privacy.*

Expression of Interest

While not required, students are strongly encouraged to send brief expressions of interest to the Department to be considered for an award. The expressions of interest should be sent by April 1, 2013 to the contact shown below and should include the following elements: (1) Name of Candidate(s); (2) Name of educational institution(s) with which Candidate(s) are affiliated; (3) Telephone and email addresses for Candidate(s); (4) brief high-level overview of the proposed project.

Submission Requirements

Final submission packages shall consist of the following elements:

1. Nomination letter from at least one teacher, advisor, faculty member, and others as appropriate. The nomination letter(s) must communicate the following accomplishments in two areas:

a. Technical Merit of the Concept

Evidence of technical merit based upon teacher (parent or legal guardian in the case of home schooled applicants), advisor, or faculty nomination and evaluation of the submitted proposal, written paper, and/or reports.

b. Professionalism and Leadership

Evidence of professionalism and leadership may be in the form of, but not limited to:

(1) Membership and offices held in various groups

(2) Presentations made to various groups, meetings, and at symposia

(3) Leadership in student professional activities

(4) Community outreach activities

2. An overall summary of the innovation, not to exceed one page, which includes a title of the project and statement of the impact that the innovation will have on the field of aviation or aerospace;

3. A copy of the student's academic transcript or certified grade report (as applicable);

4. A copy of the paper(s) and related materials describing the innovative concept written by the student(s) being nominated (no page limit).

Once submissions have been received, the Department may request additional information, including supporting documentation, more detailed contact information, releases of liability, and statements of authenticity to guarantee the originality of the work. Failure to respond in a timely fashion may result in disqualification.

All materials should be forwarded with a cover letter to the attention of: Patricia Watts, Ph.D., Centers of Excellence Program Director, Federal Aviation Administration, L–28, FAA William J. Hughes Technical Center, Atlantic City International Airport, NJ 08405.

Hardcopy is preferred; however, the package also may be transmitted by email to *Patricia.Watts@FAA.gov.* The submission period begins on May 1, 2013. Submissions must be sent by 11:59 p.m. Pacific daylight time on July 1, 2013. The timeliness of submissions will be determined by the postmark (if sent in hard copy) or time stamp of the recipient (if emailed). Award administrators assume no responsibility for lost or untimely submissions for any reason.

Award

The winner will be announced by October 2013. A trophy with the winner's name and date of award will be displayed at the Department of Transportation and a display copy of the trophy will be sent to the winner's school/college/university. An additional plaque or trophy will be awarded to the

individual or team. At the option of the Secretary, the Department will pay for invitational travel expenses to Washington, DC for up to four representatives of the winning team to present their project to Department officials and receive the award from the Secretary.

Basis Upon Which the Winner Will Be Selected

All submissions will be initially reviewed by the FAA Centers for Excellence Program Director upon receipt to determine if the submissions meet the eligibility requirements. Registration packages meeting the eligibility requirements will be judged by advisory panels consisting of academic experts, government officials including FAA, the Department, and representatives of the private sector. The advisory panels will select the most highly qualified submissions and present them to the Secretary of the Department, who will select the winning entrant.

Submissions will be judged on the following criteria:

Technical Merit

- Has the submission presented a clear understanding of the associated problems?
- Has the submission developed a logical and workable solution and approach to solving the problem/s?
- What are the most significant aspects of this concept?
- Has the submission clearly demonstrated the breadth of impact of the innovation?

Originality

- Is this concept new or a variation of an existing idea, and in what way(s)?
- How is this work unique?
- Was the concept developed independently or in cooperation with others?

Impact

- To what extent will this project make a significant impact and/or contribution to the future of the aviation and aerospace environment?

Practicality

- Who directly benefits from this work?
- Can this program or activity be implemented in a practical fashion?
- What are the costs anticipated to be incurred and saved by executing this concept?

Measurability

- How has this individual/group measured the impact on the aviation environment?
- To what extent does the innovation result in measurable improvements?

Applicability

- Can this effort be scaled?
- Is this work specific to one region, various regions, or to the entire nation?

All factors are important and will be given consideration, but the advisory panels will give the ''technical merit'' factor the most weight in the screening process. The Secretary retains sole discretion to select the winning entrant.

Additional Information: Federal grantees may not use Federal funds to develop COMPETES Act challenge applications.

Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

Authority: 15 U.S.C. 3719 (America COMPETES Act).

Issued on: February 21, 2013.

Susan L. Kurland,

Assistant Secretary of Aviation and International Affairs.

[FR Doc. 2013–04710 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–06]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before March 20, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0058 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 19, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0058.

Petitioner: Southwest Airlines.

Section of 14 CFR Affected: 14 CFR121.467(b)(13).

Description of Relief Sought: Southwest requests approval to relieve each flight attendant engaged in air transportation from all further duty for at least 24 consecutive hours during ''any 168 consecutive hour period'' in lieu of ''any 7 consecutive calendar days.''

[FR Doc. 2013–04597 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–07]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (CFR) part 25. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before March 20, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0101 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Menkin, ANM–113, Standardization Branch, Federal Aviation Administration, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, WA 98057; email *michael.menkin@FAA.gov;* 425–227–2793; fax: 425–227–1320; or Andrea Copeland, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW.; Washington, DC 20591; email *andrea.copeland @faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 25, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0101.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 25.853(d) and condition 1 of Special Conditions 25–370–SC.

Description of Relief Sought: To allow the use of Ensolite as an energy absorbing material on side-facing, business-class passenger seats with inflatable restraints on the Boeing Model 787–9 airplane.

[FR Doc. 2013–04688 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, Palo Comado Canyon Road Interchange, along U.S. 101 from postmile 33.0 to 34.4 in the County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 28, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Carlos J. Montez, Environmental Branch Chief, California Department of Transportation, 100 S. Main St., Los Angeles, CA 90012, Regular Office Hours 8:00am–5:00pm, Telephone Number (213) 897–9116, Email *carlos.montez@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The U.S. 101/Palo Comado Canyon Road Interchange Project in the City of Agoura Hills would widen Palo Comado Canyon Road from two to four lanes between Driver Ave. and Chesebro Road. It would be widened from one lane in each direction to provide two lanes in each direction, along with a dedicated left-hand turn lane, for a total of five striped lanes. A Class II bike lane and sidewalks would be provided on both sides of the overcrossing. The project would take approximately 15 months to construct. The purpose of the project is to reduce congestion within the project limits, improve safety at this interchange, and accommodate pedestrian and bicycle traffic along Palo Comado Canyon Road. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on January 12, 2012 and in the FHWA Mitigated Negative Declaration (MND) issued on November 15, 2012 and in other documents in the FHWA project records. The EA, MND, and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA and MND can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist07/resources/envdocs/* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA)
2. Safe, Accountable, Flexible and Efficient, Transportation Equity Act, A Legacy for Users (SAFETEA–LU)
3. MAP 21—Moving Ahead for Progress in the 21st Century
4. Title VI of the Civil Rights Act of 1964
5. National Historic Preservation Act of 1966
6. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
7. Section 4(f) of the Transportation Act of 1966

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Dated: February 20, 2013.

Matthew Schmitz,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2013–04643 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Railroad Safety: Advisory Notice Related to Railroad Accidents in Vicinity of Underground Pipelines

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Advisory Notice.

SUMMARY: In response to Safety Recommendation R–12–04 issued by the National Transportation Safety Board (NTSB), FRA is issuing this Advisory Notice to inform railroads of the circumstances surrounding the June 19, 2009, derailment of eastbound Canadian National Railway (CN) Freight Train U70691–18 in Cherry Valley, IL, and to remind railroads of the need to immediately notify pipeline operators of rail accidents occurring in railroad rights-of-way where pipelines are present and the need to ensure that pipeline inspections are accomplished prior to resumption of service.

FOR FURTHER INFORMATION CONTACT: Karl Alexy, Staff Director, Hazardous Materials Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone: (202) 493–6245; or *Karl.Alexy@dot.gov;* or Elisabeth Galotto, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone: (202) 493–0270; or *Elisabeth.Galotto@dot.gov.*

SUPPLEMENTARY INFORMATION: On June 19, 2009, at approximately 8:36 p.m. (CST), CN Freight Train U70691–18, traveling eastbound at 36 mph, derailed at a highway-rail grade crossing in Cherry Valley, IL. The train consisted of two locomotives and 114 cars, 19 of which derailed. All of the derailed cars were tank cars carrying denatured fuel ethanol, a flammable liquid. Thirteen of the derailed tank cars were breached or lost product and caught fire. At the time of the derailment, several motor vehicles were stopped on either side of the grade crossing waiting for the train to pass. As a result of the fire that erupted after the derailment, a passenger in one of the stopped cars was fatally injured, two passengers in the same car received serious injuries, and five occupants of other cars waiting at the highway-rail grade crossing were injured. Two responding firefighters also sustained minor injuries. The release of ethanol and the resulting fire prompted a mandatory evacuation of about 600 residences within a half-mile radius of the accident site.

The NTSB determined that the probable cause of the accident was the washout of the track structure that was discovered about 1 hour before the train's arrival, and CN's failure to notify the train crew of the known washout in time to stop the train because of the inadequacy of CN's emergency communication procedures.

At the derailment site was a 12-inch diameter underground natural gas transmission pipeline operated by Nicor Gas. The pipeline well exceeded Federal standards for protective ground cover. Yet, as the wreckage was removed from above the pipeline, Nicor's crews discovered that a railcar wheel and axle assembly had impacted the pipeline. Although the pipeline was buried about 11 feet deep and protected within a 16-inch diameter casing, the railcar wheels severely dented the pipeline. The impact caused a severe flattening of the pipe casing with sharp angular bends at two locations where the railcar wheel assembly contacted it. This degree of deformation to the 16-inch pipe casing likely caused similar damage to the 12-inch carrier pipe. The NTSB concluded that had the gas pipeline been installed at the railroad crossing with only the minimum level of ground cover permitted by the current Federal and industry pipeline construction standards, it likely would have failed as a result of being struck by derailed equipment in this accident. Accordingly, NTSB issued Safety Recommendation R–12–04 recommending that FRA ''[i]nform railroads about the circumstances of the accident and advise them of the need to immediately notify pipeline operators of accidents occurring in railroad rights-of-way and ensure that pipeline inspections are accomplished prior to resumption of service.''

On July 31, 2012, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an advisory bulletin in the **Federal Register** (77 FR 45417–45418), encouraging pipeline owners and operators, as a part of their public awareness programs, to inform rail operators and emergency response officials of the benefits of using the 811 ''Call Before You Dig'' program to identify and notify underground utilities that an incident has occurred in the vicinity of their buried facilities.

Like PHMSA, FRA encourages railroads to use the 811 ''Call Before You Dig'' program to notify pipeline operators of rail accidents occurring in railroad rights-of-way where pipelines are present and to ensure that pipeline inspections are accomplished prior to resumption of service. By calling 811, pipeline owners and operators will be notified of potential problems the accident may have caused to the pipeline, and enable the pipeline owners and operators to work with the involved railroads to prevent further injury to individuals cleaning up the accident site.

Issued in Washington, DC, on February 25, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–04684 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2013–01; Passing Stop Signals Protecting Movable Bridges

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2013–01 to remind track

owners, railroads, and their employees of the importance of ensuring that rails are properly aligned and movable spans are secured before permitting a train to pass a signal that is displaying a stop indication and protecting a movable bridge. FRA is issuing this notice in response to a recent train accident involving a derailment in which there was an unsecured swing span that moved laterally during the passage of a train. This notice recommends that track owners and railroads: (1) Evaluate the design and construction of existing movable bridges to determine if effective span locking is being provided; (2) review current operating rules and procedures to ensure that these instructions adequately protect movable bridges during the operation of trains; and (3) ensure that employees authorized to determine whether movable bridges are correctly aligned and secured are adequately trained to perform these duties.

FOR FURTHER INFORMATION CONTACT: Carlo M. Patrick, Staff Director, Rail and Infrastructure Integrity Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6399; David R. Killingbeck, Chief Engineer—Structures, Rail and Infrastructure Integrity Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6251; or Anna Nassif Winkle, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6166.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2012, a Consolidated Rail Corporation mixed freight train with two locomotives and 82 freight cars, including 51 hazardous materials tank cars, derailed seven cars while crossing a single-leaf movable swing bridge. The derailed cars included loaded tank cars of vinyl chloride and ethanol. One vinyl chloride tank car was breached, resulting in the release of its contents into a waterway and the atmosphere, as well as in the subsequent evacuation of approximately 600 nearby residents.

Due to the typically limited train traffic over the bridge, it was normally left in an open position when not needed in order to allow pleasure craft to pass. Upon arriving at the bridge, a train crew would normally encounter a stop signal and the bridge in the fully-open position, oriented approximately perpendicular to the track. As such, once stopped at the signal, the train crew normally would request the bridge to close using the key pad on the locomotive radio. Through the use of a programmable logic controller, an automated sequence would commence closing and seating the bridge and then moving the slide lock rails into the locked position. Once the slide lock rails were fully engaged, a signal to proceed would be displayed.

Following the derailment, the swinging end of the movable span was found to be laterally displaced approximately three feet. Although FRA's investigation of this accident is ongoing, and the probable causes and contributing factors have not yet been established, preliminary indications are that the movable span was not locked in place and moved or rotated laterally during the passage of the train. Unlike most swing bridges that possess end wedges that when driven, prevent rotation of the span, the subject bridge was a rare, shear-pole swing span that had neither end wedges nor span locks. The slide rails that were part of the movable bridge rail joints provided the only means of securing the span from rotating.

Recommended Action: In light of the above discussion, FRA recommends that track owners and railroads:

1. Evaluate the design of existing movable bridges, especially swing bridges, to determine if effective span locking, independent of rail locking, is being provided as recommended in Chapter 15 (Steel Structures) of the current American Railway Engineering and Maintenance-of-Way Association Manual for Railway Engineering.

2. Evaluate operating rules and procedures that permit the operation of trains past a stop signal protecting a movable bridge to ensure their adequacy to prevent operation of trains should the bridge not be properly aligned and secured.

3. Review the adequacy of all training given to employees authorized to determine that a movable bridge is properly aligned and locked to ensure that employees are capable of correctly determining that the movable bridge is safe for train movements.

FRA encourages track owners and railroads to take actions that are consistent with the preceding recommendations and to take other actions to help ensure the safety of the Nation's railroads, their employees, and the general public. FRA may modify this Safety Advisory 2013–01, issue additional safety advisories, or take other appropriate actions it deems necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, on February 22, 2013.

Jo Strang,

Associate Administrator for Railroad Safety/ Chief Safety Officer.

[FR Doc. 2013–04713 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the East San Fernando Valley Transit Corridor Project, Los Angeles, California

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) are issuing this Notice of Intent (NOI) to advise other agencies and the public that they will jointly prepare an Environmental Impact Statement (EIS) for proposed transit improvements in the East San Fernando Valley Transit Project Corridor in Los Angeles County, California. The proposed project would provide new transit service and related infrastructure in the eastern San Fernando Valley. The EIS will evaluate new light rail and bus rapid transit services alternatives, generally running north-south along portions of Van Nuys and Sepulveda Boulevards.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations. The EIS process will evaluate alternatives recommended for further study as a result of the planning Alternatives Analysis approved by the LACMTA Board on January 24, 2013, and available on the LACMTA Web site (*http://www.metro.net/east-sfv*). Pursuant to 23 CFR 771.123(j), at the conclusion of the Draft Environmental Impact Statement (DEIS) circulation period, LACMTA will prepare a report identifying the locally preferred alternative (LPA). Prior to commencement of a Final EIS, the LPA will be adopted by the LACMTA Board and included in the Metropolitan Transportation Plan identifying sufficient federal and other funding for the project, in order to be evaluated under the NEPA process.

LACMTA will also use the EIS document to comply with the California Environmental Quality Act (CEQA), which requires an Environmental Impact Report (EIR). The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, and to invite public participation in the EIS process, including providing comments on the scope of the DEIS, and to announce that public scoping meetings will be conducted.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to LACMTA on or before May 6, 2013 at the address below. See **ADDRESSES** below for the address to which written public comments may be sent. Public scoping meetings to accept comments on the scope of the EIS/EIR will be held on the following dates:

- Saturday, March 16, 2013; 10:00 a.m. to 12:00 p.m. at the Panorama High School, 8015 Van Nuys Boulevard, Panorama City, CA 91402.
- Tuesday, March 19, 2013; 6:00 to 8:00 p.m. at the San Fernando Aquatic Center, 208 Park Avenue, San Fernando, CA 91340.
- Thursday, March 21, 2013; 6:00 to 8:00 p.m. at Arleta High School—Cafeteria, 14200 Van Nuys Boulevard, Arleta, CA 91331.
- Wednesday, March 27, 2013; 4:00 to 6:00 p.m. at the Van Nuys Civic Center—Marvin Braude Constituent Service Center, 6262 Van Nuys Boulevard, Van Nuys, CA 91401.

The locations are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the scoping meeting should contact the project at least 3 days prior to the meetings at (818) 276–5233 or *eastsfvtransit@metro.net*.

Scoping materials will be available at the meetings and are available on the LACMTA Web site (*http://www.metro.net/projects/east-sfv*). Hard copies of the scoping materials may also be obtained from the project at (818) 276–5233 or *eastsfvtransit@metro.net*. An interagency scoping meeting will be held on Wednesday, March 20, 2013, at 1:00 p.m. at LACMTA, in the Union Station Room, 3rd Floor, One Gateway Plaza, Los Angeles, CA 90012. Representatives of Native American tribal governments and of all federal, state, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Mr. Walt Davis, Project Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop 99–22–3, Los Angeles, CA 90012, or via email at *eastsfvtransit@metro.net*. The locations of the public scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mary Nguyen, Environmental Protection Specialist, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 2170, Los Angeles, CA 90017, phone (213) 202–3960, or via email at *mary.nguyen@dot.gov*.

SUPPLEMENTARY INFORMATION:

Scoping

Scoping is the process of determining the scope, focus, and content of an EIS. FTA and LACMTA invite all interested individuals and organizations, public agencies, and Native American tribes to comment on the scope of the DEIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: Alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives, and the identification of any significant social, economic, or environmental issues relating to the alternatives.

NEPA ''scoping'' has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an EIS—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

In the interest of producing a readable and user-friendly public document, and pursuant to 40 CFR 1502.10, the EIS shall be limited to 250 pages exclusive of any 4(f) and/or 6(f) evaluation. The EIS should emphasize graphics and virtual visual simulations over technical jargon, and technical appendices shall be included in a separate volume.

Project Initiation

The FTA and LACMTA will prepare an EIS/EIR for the East San Fernando Valley Transit Corridor Project pursuant to 23 U.S.C. 139 and CEQA. LACMTA is serving as the local lead agency for purposes of CEQA environmental clearance. FTA is serving as the lead federal agency and LACMTA as a co-lead agency for the purpose of NEPA. This notice shall alert interested parties to the preparation of the EIS/EIR, describe the alternatives under consideration, invite public participation in the EIS/EIR process, and announce the public scoping meetings. FTA and LACMTA will invite interested federal, state, tribal, regional and local government agencies to be participating agencies under the provisions of 23 U.S.C. 139.

Purpose and Need for the Project

Based on an evaluation of socioeconomic, congestion growth trends, travel conditions, and feedback from the project stakeholder meetings, it is demonstrated that existing and projected levels of traffic congestion in the corridor limit mobility in general, reducing the reliability of transit services. In light of these conditions, the purpose of the project can be summarized as follows:

- Improve mobility in the eastern San Fernando Valley by introducing an improved north-south transit connection between key transit hubs/routes.
- Enhance transit accessibility/connectivity for residents within the eastern San Fernando Valley to local and regional destinations.
- Provide more reliable transit service within the eastern San Fernando Valley.
- Provide additional transit options in an area with a large transit dependent population and high number of transit riders.
- Encourage modal shift to transit in the eastern San Fernando Valley, thereby improving air quality.

Project Location and Environmental Setting

The proposed project is located in the eastern San Fernando Valley, extending from Ventura Boulevard in the Sherman Oaks area of the City of Los Angeles

north to the Sylmar-San Fernando Metrolink Station in the City of San Fernando. Major arterial roadways include Sepulveda and Van Nuys Boulevards and San Fernando Road. Freeways include US 101, I–405, I–5, SR–118, 1–210, and SR–170. In addition to Metro Local and Rapid bus service, area transit services include the Metro Orange Line (Orange Line) bus rapid transit service, Metrolink Ventura Line and Antelope Valley Line commuter rail services, and Amtrak inter-city rail service.

Land uses in the area include medium- to high-density residential uses and commercial uses. Several car dealerships comprising Auto Row are located along Van Nuys Boulevard, south of Chandler Boulevard. Government services are consolidated at the Van Nuys Civic Center. Major activity centers include The Village at Sherman Oaks, Sherman Oaks Galleria, Panorama Mall, California State University Northridge, Burbank Bob Hope Airport, Van Nuys Airport, Mission Hills Hospital, Kaiser Permanente Hospital, and several schools, youth centers, and recreational centers.

Alternatives

The alternatives for the East San Fernando Valley Transit Corridor include the No-Build Alternative, Transportation System Management (TSM) Alternative, and build alternatives, which include multiple modes and routes. Potential modes for the build alternatives include bus rapid transit (BRT) and light rail transit (LRT). *The Metro East San Fernando Valley Transit Corridor Alternatives Analysis Report* (2013) (AA), prepared for LACMTA, studied a large number of transit alternatives in the corridor. The AA is available on the LACTMA Web site at *http://www.metro.net/projects/east-sfv/east_sfv-reports*. For the build alternatives, the report considered a large number of surface-running routes that would provide a direct transit connection between Sherman Oaks at the southern end of the project corridor and Sylmar and the City of San Fernando at the northern end.

The Draft EIS/EIR will analyze any reasonable alternatives uncovered during scoping. The alternatives being evaluated include:

No-Build Alternative: The No-Build Alternative represents the predicted conditions through the year 2035. No new transportation infrastructure would be built within the project area aside from projects currently under construction, or funded for construction and operation by 2035. This alternative will include the highway and transit projects in the current constrained element of the LACMTA Long Range Transportation Plan (LRTP) and the 2012 Southern California Association of Governments Regional Transportation Plan (RTP). This alternative establishes a baseline for comparison for the other alternatives in terms of benefits and costs, and in terms of environmental analysis.

Transportation System Management (TSM) Alternative: The TSM Alternative enhances the No Build Alternative and emphasizes transportation systems upgrades. It represents the best that can be done to improve transit service without high-cost investment, and includes increased bus frequencies or minor modifications to the roadway network or traffic control systems. The TSM Alternative consists of the No-Build bus network and enhanced bus frequencies for the existing Metro Rapid Bus 761, which runs primarily on Van Nuys Boulevard in the Corridor. The Metro Rapid Bus 761 would operate on headways reduced from 10 minutes peak/17.5 minutes off-peak to 6 minutes peak/12 minutes off-peak. In addition, Metro will evaluate the Local 233 line, which also provides service to Van Nuys Boulevard, and Metro Rapid 734 and Local 234 lines, which provide service to Sepulveda Boulevard, approximately one mile west of Van Nuys Boulevard. The lines will be evaluated and headways adjusted as appropriate. Additional TSM options include intersection improvements, minor road widening, traffic engineering actions, signalization improvements, bus stop amenities/improvements, and bus schedule restructuring.

Light Rail Transit (LRT) Alternative: This median-running LRT alternative would travel from the Sylmar-San Fernando Metrolink Station southeast to Van Nuys Boulevard, and then south to Ventura Boulevard. It would serve the Cities of San Fernando and Los Angeles, including the communities of Sylmar, Pacoima, Arleta, Panorama City, Van Nuys, and Sherman Oaks, with approximately 13 stations. It may be completed in phases, which could include starting the alignment at the Van Nuys Boulevard Orange Line Station to the south and terminating at Van Nuys Boulevard and San Fernando Road to the north. The entire 11.2-mile route would operate in a dedicated guideway.

This alternative would include the construction of a new rail maintenance facility. The exact location of the proposed facility has yet to be determined. However, the selection of the facility will be based on the following criteria:

- Located within an industrialized area
- Proximity to the alignment (Van Nuys Boulevard and San Fernando Road)
- Accessibility via rail tracks
- Sufficient size for facility site

Bus Rapid Transit (BRT) Alternative: This generally median-running BRT alternative would operate from the Sylmar-San Fernando Metrolink Station in the north to the Sepulveda Boulevard Orange Line Station or Sepulveda Boulevard and Ventura Boulevard in the south, as described in Options 1, 2, and 3 below. It would serve the Cities of San Fernando and Los Angeles, including the communities of Sylmar, Pacoima, Arleta, Panorama City, Van Nuys, and Sherman Oaks, with approximately 14 stations. Approximately 9.4 miles of the route would operate in a median-running configuration. The remaining 2.6 miles would operate in mixed-flow traffic between the Sylmar-San Fernando Metrolink Station and San Fernando Road and Van Nuys Boulevard.

The BRT includes three options. Option 1 would require operation in mixed flow traffic along Van Nuys Boulevard south of the Van Nuys Orange Line Station. Option 2 would continue operation to the west within the Orange Line guideway to the Sepulveda Orange Line Station. Option 3 would continue a dedicated lane south from the Sepulveda Orange Line Station along to Sepulveda Boulevard to Ventura Boulevard.

In addition to the alternatives described above, other reasonable transit alternatives identified through the public and agency scoping process will be evaluated for potential inclusion in the EIS.

Probable Effects

The purpose of this EIS process is to study, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and LACMTA will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. The probable impacts will be determined as a part of the project scoping. Unless further screening illuminates areas of possible impact, resource areas will be limited to those uncovered during scoping. Measures to avoid, minimize, and mitigate adverse impacts will also be identified and evaluated.

FTA Procedures

The regulations implementing NEPA call for public involvement in the EIS

process. FTA and LACMTA are required by 23 U.S.C. 139 to do the following: (1) Extend an invitation to other federal and non-federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other federal and non-federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and LACMTA will not be able to identify all federal and non-federal agencies and Native American tribes that may have such an interest. Any federal or non-federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted by LACMTA on the project Web site (*http://www.metro.net/projects/east-sfv*). The public involvement program includes a full range of activities including a public scoping process to define the issues of concern, a project web page on the LACMTA Web site, development and distribution of project newsletters, and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the public involvement program.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFRparts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 23 CFR 771.133, FTA will comply with all federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324); the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); the Section 404(b)(1) guidelines of EPA (40 CFR part 230); the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR part 800); the regulation implementing Section 7 of the Endangered Species Act (50 CFR part 402); Section 4(f) (23 U.S.C. 38 and 49 U.S.C. 303); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: February 25, 2013.

Leslie T. Rogers,

Regional Administrator, Regional IX, Federal Transit Administration.

[FR Doc. 2013–04709 Filed 2–27–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0015]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LAST TIME AROUND; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0015. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *LAST TIME AROUND* is:

Intended Commercial Use Of Vessel: ''Chartering for day or week''

Geographic Region: Florida, Puerto Rico.

The complete application is given in DOT docket MARAD–2013–0015 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 19, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–04705 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0012]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GATO; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0012. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GATO is:

Intended Commercial Use of Vessel: Six pack charters, half day and full day, off the coast.

Geographic Region: ''Florida''

The complete application is given in DOT docket MARAD–2013–0012 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 19, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–04704 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0013]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SPIRIT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0013. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SPIRIT is:

Intended Commercial Use Of Vessel: ''Private charter—up to 12 passengers only. No carriage of cargo, commercial fishing, towing, dredging or salvage''

Geographic Region: Florida.

The complete application is given in DOT docket MARAD–2013–0013 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 19, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–04691 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0014]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DELPHINE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0014. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DELPHINE is:

Intended Commercial Use Of Vessel: ''Sailboat charters''.

Geographic Region: Puerto Rico, Florida, California. The complete application is given in DOT docket MARAD–2013–0014 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 19, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–04703 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0016]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CATSPAJAUMAS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 1, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0016. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CATSPAJAUMAS is:

Intended Commercial Use Of Vessel: ''Offer water weddings and ash scattering in South Puget Sound, WA''.

Geographic Region: ''Washington''

The complete application is given in DOT docket MARAD–2013–0016 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 19, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–04707 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0162, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2004 Ford F–150 Crew Cab Trucks Manufactured for Sale in the Mexican Market Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 Ford F–150 Crew Cab trucks manufactured for sale in the Mexican market that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2004 Ford F–150 Crew Cab truck) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 1, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. 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.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Mesa Auto Wholesalers of Chandler, Arizona (Mesa) (Registered Importer No. 94–018) has petitioned NHTSA to decide whether nonconforming 2004 Ford F–150 Crew Cab trucks manufactured for sale in the Mexican market are eligible for importation into the United States. The vehicles which Mesa Auto Wholesalers believes are substantially similar are 2004 Ford F–150 Crew Cab trucks that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2004 Ford F–150 Crew Cab trucks manufactured for sale in the Mexican market to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Mesa submitted information with its petition intended to demonstrate that non-U.S. certified 2004 Ford F–150 Crew Cab trucks manufactured for sale in the Mexican market, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2004 Ford F–150 Crew Cab trucks manufactured for sale in the Mexican market are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 109

New Pneumatic Tires and Certain Specialty Tires, 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the instrument cluster with a U.S.—model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of the following U.S.-model components on vehicles not already so equipped: (a) Headlamps; (b) tail lamps (c) front and rear side marker lamps; and (d) a U.S.-model high-mounted stop lamp.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of the existing mirror.

Standard No. 110 *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With GVWR of 4,536 kilgrams (10,000 pounds) or Less:* Installation of a tire and rim information placard.

The petitioner states that each vehicle will be inspected prior to importation for compliance with the Theft Prevention Standard in 49 CFR part 541 and that anti-theft devices will be installed on all vehicles not already so equipped.

The petitioner additionally states that a certification label must be affixed to the driver's door jamb to meet the requirements of 49 CFR part 567.

As previously stated, the petitioner claims that the vehicle, as originally manufactured, complies with FMVSS No. 208 *Occupant Crash Protection.* NHTSA seeks specific comments on whether the vehicle, which is manufactured for sale in the Mexican Market, does in fact comply with all requirements of FMVSS No. 208, including the unbelted occupant protection requirements of this standard.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 22, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–04721 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0161, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2003 Jeep Wrangler Multi-Purpose Passenger Vehicles Manufactured for Sale in the Mexican Market Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Jeep Wrangler multi-purpose passenger vehicles manufactured for sale in the Mexican market that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2003 Jeep Wrangler MPV) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 1, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* 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

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally

manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Mesa Auto Wholesalers of Chandler, Arizona (Mesa) (Registered Importer 94–018) has petitioned NHTSA to decide whether nonconforming 2003 Jeep Wrangler MPVs manufactured for sale in the Mexican market are eligible for importation into the United States. The vehicles which Mesa Auto Wholesalers believes are substantially similar are 2003 Jeep Wrangler MPVs that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2003 Jeep Wrangler MPVs manufactured for sale in the Mexican market to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Mesa submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Jeep Wrangler MPVs manufactured for sale in the Mexican market, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2003 Jeep Wrangler MPVs manufactured for sale in the Mexican market are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 109 *New Pneumatic Tires and Certain Specialty Tires,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the instrument cluster with a U.S.-model component with inscription of the word ''brake'' on the brake failure warning light as well as reading speed in mph.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of the following U.S.-model components on vehicles not already so equipped: (a) Headlamps; (b) tail lamps (c) front and rear side marker lamps; and (d) a U.S.-model high-mounted stop lamp.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of the existing mirror.

Standard No. 110 *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Vehicles Under 4,536 kilograms (10,000 pounds) or less:* Installation of a tire and rim information placard.

The petitioner states that each vehicle will be inspected prior to importation for compliance with the Theft Prevention Standard in 49 CFR part 541 and that anti-theft devices will be installed on all vehicles not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565 and that a certification label must be affixed to the driver's door jamb to meet the requirements of 49 CFR part 567.

As previously stated, the petitioner claims that the vehicle, as originally manufactured, complies with FMVSS No. 208 *Occupant Crash Protection.* NHTSA seeks specific comments on whether the vehicle, which is manufactured for sale in the Mexican Market, does in fact comply with all requirements of FMVSS No. 208, including the unbelted occupant protection requirements of this standard.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 22, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–04715 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0013]

Technical Report: Effectiveness of LED Stop Lamps for Reducing Rear-End Crashes: Analyses of State Crash Data

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating LED Stop Lamps. The report's title is: *Effectiveness of LED Stop Lamps for Reducing Rear-End Crashes: Analyses of State Crash Data.*

DATES: Comments must be received no later than June 28, 2013.

ADDRESSES: *Report:* The technical report is available on the Internet for viewing in PDF format at *http://www-nrd.nhtsa.dot.gov/Pubs/811712.pdf.* You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Nathan K. Greenwell (NVS–431), National Highway Traffic Safety Administration, Room W53–438, 1200

New Jersey Avenue SE., Washington, DC 20590.

Comments: You may submit comments [identified by Docket Number NHTSA–2013–0013] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–366–3189.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9826.

Instructions: For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Nathan K. Greenwell, Mathematical Statistician, Evaluation Division, NVS–431, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–438, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–3860. Email: *nathan.greenwell@dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: You may see a list of published evaluation reports at *http://www-nrd.nhtsa.dot.gov/cats/listpublications.aspx?Id=226&ShowBy=Category* and if you click on any report you will be able to view it in PDF format.

SUPPLEMENTARY INFORMATION: The purpose of this report is to analyze the crash-reduction benefits of light-emitting diode (LED) stop lamps and LED center high-mounted stop lamps (CHMSL) using real-world crash data. Previous work on this subject included laboratory experiments that suggest LED lamps were more beneficial than incandescent lamps at preventing rear-impact collisions. NHTSA statistically compared the overall ratio of rear-impact crashes to a control group of frontal impacts before and after the switch to LED. Overall, the analysis does not support a firm conclusion about whether LED stop lamps and LED CHMSL are more effective than incandescent lamps. The main analysis shows a significant overall 3.6% reduction in rear-impact crashes with LED. On the other hand, a non-parametric analysis not only fails to show improvement in significantly more than half the models, but actually shows an increase in rear impacts with LED for 9 of the 17 make-models that switched to LED. It was just the favorable results for high-sales vehicles such as Honda Accord that pulled the overall result into the plus. Furthermore, and perhaps most important, none of these 17 make-models is a ''clean'' switch pair that shifted to LED without changing anything else. All of the switch pairs shifted to LED at the same time that they changed the rear-lighting configuration and/or redesigned the vehicle. Basically, the crash data probably won't support a firm conclusion until we have more switch pairs, including some ''clean'' switch pairs.

Procedural Matters

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2013–0013) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov.*

Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U. S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The fax number is 1–202–366–3189. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Nathan K. Greenwell, Mathematical Statistician, Evaluation Division, NVS–431, National Highway Traffic Safety Administration, Room W53–438, 1200 New Jersey Avenue SE., Washington, DC 20590 (or email them to *nathan.greenwell@dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further,

some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. 2013–04690 Filed 2–27–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 25, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before April 1, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0054.

Type of Review: Extension without change of a currently approved collection.

Title: Ownership Certificate.

Form: 1000.

Abstract: Form 1000 is used by citizens, resident individuals, fiduciaries, partnerships and nonresident partnerships in connection with interest on bonds of a domestic, resident foreign, or nonresident foreign corporation containing a tax-free covenant and issued before January 1, 1934. IRS uses the information to verify that the correct amount of tax was withheld.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Total Burden Hours: 5,040.

OMB Number: 1545–0098.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Tentative Refund.

Form: 1045.

Abstract: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a new operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 515,114.

OMB Number: 1545–0160.

Type of Review: Extension without change of a currently approved collection.

Title: Annual Information Return of Foreign Trust With a U.S. Owner.

Form: 3520–A.

Abstract: Section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520–A. The form is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 21,700.

OMB Number: 1545–0390.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Arrangement (IRA).

Form: 5306.

Abstract: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 8,244.

OMB Number: 1545–0938.

Type of Review: Extension without change of a currently approved collection.

Title: Interest Charge Domestic International Sales Corporation Return.

Form: 1120–IC–DISC, Schedules K and P (1120–IC–DISC).

Abstract: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120 IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC- DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders; Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealing with related suppliers, etc.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 242,340.

OMB Number: 1545–1181.

Type of Review: Extension without change of a currently approved collection.

Title: Required Payment or Refund Under Section 7519.

Form: 8752.

Abstract: Form 8752 is used to verify that partnerships and S corporations that have made a section 444 election have correctly reported the payment required under section 7519.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 565,920.

OMB Number: 1545–1593.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. Income Tax Return for Qualified Funeral Trusts.

Form: 1041–QFT.

Abstract: IRC section 685 allows the trustee of a qualified funeral trust to

elect to report and pay the tax for the trust. Data is used to determine that the trustee filed the proper return and paid the correct tax.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 270,150.

OMB Number: 1545–1680.

Type of Review: Extension without change of a currently approved collection.

Title: United States Additional Estate Tax Return Under Code Section 2057.

Form: 706–D.

Abstract: Form 706–D is used by individuals to compute and pay the additional taxes due under Code section 2057. IRS uses the information to determine that the taxes have been properly computed.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 530.

OMB Number: 1545–1693.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

Form: 8871, 8453–X.

Abstract: Internal Revenue Code section 527, as amended by P.L. 106–230 and Public Law 107–276, requires certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, board of directors, and any related entities (within the meaning of section 168(h)94). Forms 8871 and 8453–X are used for this purpose.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 35,195.

OMB Number: 1545–1695.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Ruling 2000–33, Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

Abstract: This revenue ruling specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 500.

OMB Number: 1545–1842.

Type of Review: Extension without change of a currently approved collection.

Title: Health Coverage Tax Credit Registration Form.

Form: 13441, 13441–EZ.

Abstract: Form 13441, Health Coverage Tax Credit Registration Form, will be directly mailed to all individuals who are potentially eligible for the HCTC. Potentially eligible individuals will use this form to determine if they are eligible for the Health Coverage Tax Credit and to register for the HCTC program. Participation in this program is voluntary. This form will be submitted by the individual to the HCTC program office in a postage-paid, return envelope.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 1,800.

OMB Number: 1545–2004.

Type of Review: Revision of a currently approved collection.

Title: Notice 2006–52—Deduction for Energy Efficient Commercial Buildings.

Abstract: This notice sets forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of Section 179D(c)(1) and (d). This notice also provides a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of Section 179D of the Code.

Affected Public: Private Sector: Business or other for-profit; Individuals or Households.

Estimated Total Burden Hours: 7,575.

OMB Number: 1545–2014.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9452; Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations.

Abstract: The American Jobs Creation Act of 2004 amended the foreign tax credit treatment of dividends from non-controlled section 902 corporations effective for post 2002 tax year and the GOZA permitted taxpayers to elect to defer the effective date of these amendments until post 2002 tax years. These regulations require a taxpayer making the GOZA election to file a statement to such effect with its next tax return, and they require certain shareholders wishing to make tax elections on behalf of their controlled foreign corporations or non-controlled section 902 corporations to execute a joint consent (that is retained by one shareholder) and attach a statement to the company's return.

Affected Public: Private Sector: Business or other for-profit.

Estimated Total Burden Hours: 25.

OMB Number: 1545–2017.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2006–46—Announcement of Rules to be included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.

Abstract: This notice announces that the IRS and Treasury Department will leave final regulations under section 897(d) and (e) of the Internal Revenue Code that will revise the rules under Temp. Treas. Reg. Sec. 1.897–5T, Notice 89–85, and Temp. Treas. Reg. Sec. 1.897–6T to take into account statutory mergers and consolidations under foreign or possessions law which may now qualify for non-recognition treatment under section 368(a)(1)(A). The specific collections of information are contained in Temp. Treas. Reg. Subsection 1.897–5T(c)(4)(II)(C) and 1.897–6T(b)(1). These reporting requirements notify the IRS of the transfer and enable it to verify that the transferor qualified for non-recognition and that the transferee will be subject to U.S. tax on a subsequent disposition of the U.S. real property.

Affected Public: Private Sector: Business or other for-profit.

Estimated Total Burden Hours: 500.

OMB Number: 1545–2019.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9451—Guidance Necessary To Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules (TD 9329).

Abstract: This document contains a final regulation that provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations.

Affected Public: Private Sector: Business or other for-profit.

Estimated Total Burden Hours: 262,500.

OMB Number: 1545–2150.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2009–58, Manufactures' Certification of Specified Plug-in Electric Vehicles.

Abstract: The American Recovery and Reinvestment Act of 2009 provides, under § 30 of the Internal Revenue Code, a credit for certain new specified plug-in electric drive vehicles. This notice provides procedures for a vehicle

manufacturer to certify to the IRS that a vehicle meets the statutory requirements for the credit, and to certify the amount of the credit available with respect to the motor vehicle. The notice also provides guidance to taxpayers who purchase motor vehicles regarding the conditions under which they may rely on the vehicle manufacturer's certification.

Affected Public: Private Sector: Business or other for-profit.

Estimated Total Burden Hours: 250.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–04631 Filed 2–27–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Proposed Collection of Information: Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection requirement, ''Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.''

DATES: Written comments should be received on or before April 29, 2013.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland, 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Sean Kemple ; Agency Enterprise Solutions Division; 401 14th Street SW., Room 348E, Washington, DC 20227, (202) 874–0132.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.

OMB Number: 1510–0NEW (OMB to affix number).

Form Number: DRAFT—FMS Form 2887.

Abstract: This form is used to collect information from individuals requesting enrollment in the Treasury SVC program, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts, and to facilitate collection of any delinquent amounts. Disclosure of the information requested on the form is voluntary; however, failure to furnish the requested information may significantly delay or prevent participation in the Treasury SVC program.

This information is collected under the authority in: 31 U.S.C. 321, General Authority of the Secretary of the Treasury; Public Law 104–134, Debt Collection Improvement Act of 1996, as amended; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, as amended; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 1322, Payments of unclaimed trust fund amounts and refund of amounts erroneously deposited; 31 U.S.C. 3720, Collection of payments; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 31 U.S.C. 7701, Taxpayer identifying number; 37 U.S.C. 1007, Deductions from pay; 31 CFR part 210, Federal Government Participation in the Automated Clearing House; 31 CFR part 285, Debt Collection Authorities under the Debt Collection Improvement Act of 1996; and E.O. 9397 (SSN), as amended.

The information on this form may be disclosed as generally permitted under 5 U.S.C. 552(a)(b) of the Privacy Act of 1974, as amended. It may be disclosed outside of the U.S. Department of the Treasury to its Fiscal and Financial Agents and their contractors involved in providing SVC services, or to the Department of Defense (DoD) for the purpose of administering the Treasury SVC programs. In addition, other Federal, State, or local government agencies that have identified a need to know may obtain this information for the purpose(s) as identified by FMS's Routine Uses as published in the **Federal Register**.

Current Actions: Continuing Information Collection. This form replaces DD Form 2887, Application for Department Of Defense (DoD) Stored Value Card (SVC) Programs, OMB Control Number: 0730–0116, Expiration Date: 31 October 2011, Request for Renewal Submitted: FR Doc. 2012–3519 Filed 2–14–12.

Type of Review: Regular.

Affected Public: Individuals.

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 10 Minutes.

Estimated Total Annual Burden Hours: 10,000 Hours.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility; and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 13, 2013.

John B. Hill,

Assistant Commissioner, Payment Management and Chief Disbursing Officer

[FR Doc. 2013–04180 Filed 2–27–13; 8:45 am]

BILLING CODE M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

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 name of one individual whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the individual identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on February 20, 2013.

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

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of 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 the benefits of trade and transactions involving U.S. companies and individuals.

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, in consultation 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 may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are 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; or (3) playing a significant role in international narcotics trafficking.

On February 20, 2013, the Director of OFAC designated the following individual whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individual

1. LINARES CASTILLO, Jose Evaristo (a.k.a. ''DON EVARISTO''); DOB 27 Jul 1965; POB Restrepo, Meta, Colombia; Cedula No. 3273595 (Colombia) (individual) [SDNTK].

Dated: February 20, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–04687 Filed 2–27–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Entity Pursuant to Executive Order 13448

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one entity whose property and interests in property are blocked pursuant to Executive Order 13448 of October 18, 2007 (''Blocking Property and Prohibiting Certain Transactions Related to Burma'') (''E.O. 13448'').

DATES: The designation by the Director of OFAC of the one entity named in this notice, pursuant to E.O. 13448 is effective February 22, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On October 18, 2007, President George W. Bush signed E.O. 13448 pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et. seq.*) (IEEPA). In E.O. 13448, President George W. Bush expanded the national emergency declared in Executive Order 13047 of May 20, 1997, and took additional steps with respect to the Government of Burma's continued repression of the democratic opposition. The President identified twelve individuals and entities in the Annex to E.O. 13448.

Section 1 of E.O. 13448 blocks, with certain exceptions, all property and interests in property that are in, or thereafter come within, the United States, or within the possession or control of United States persons, including their overseas branches, of the persons listed in the Annex to E.O. 13448, as well as those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (b)(i)—(b)(vi) of Section 1 of E.O. 13448.

On February 22, 2013, the Director of OFAC, after consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in Section 1 subparagraphs (b)(i)–(b)(vi) of E.O. 13448, the following entity, whose name has been added to the list of Specially Designated Nationals and Blocked Persons and whose property and interests in property are blocked pursuant to E.O. 13448:

AYEYARWADY BANK (a.k.a. AYEYARWADDY BANK LTD; a.k.a. IRRAWADDY BANK), Block (111–112), Asint Myint Zay, Zabu Thiri Township, Nay Pyi Taw, Burma; No. 1 Ywama Curve, Ba Yint Naung Road, Block (2), Hlaing Township, Yangon, Burma; SWIFT/BIC AYAB MM MY [BURMA].

Dated: February 22, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–04686 Filed 2–27–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0076, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–66; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–66. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–66 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–66

Item	Subject	FAR case	Analyst
I	Definition of Contingency Operation (Interim)	2013–003	Corrigan.
II	Changes to Time-and-Materials and Labor-Hour Contracts and Orders	2011–025	Jackson.
III	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items	2013–007	Jackson.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–66 amends the FAR as specified below:

Item I—Definition of Contingency Operation (FAR Case 2013–003) (Interim)

This interim rule amends the definition of ''contingency operation'' in FAR 2.101 to address the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–081). Expanding the definition to include responding to a major disaster or emergency will increase the circumstances under which agencies may raise the micro-purchase and simplified acquisition thresholds. This may increase opportunities for awarding contracts to small entities located at or near a major disaster area or emergency activities.

Item II—Changes to Time-and-Materials and Labor-Hour Contracts and Orders (FAR Case 2011–025)

This rule adopts as final a proposed rule implementing a policy that provides additional guidance to address actions required when raising the ceiling price for a time-and-materials (T&M) or labor-hour (LH) contract or order or otherwise changing the general scope of a T&M or LH contract or order. The rule provides guidance to contracting officers to address this issue for the respective areas of the FAR addressing T&M and LH contracts or orders, such as FAR sections 8.404, 12.207, and 16.601. This rule deals with the administration of T&M and LH contracts and orders and will have no direct effect on contractors. This rule will not affect how many small businesses are awarded this type of contract.

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2013–007)

This final rule amends the FAR to implement section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. Section 822 extends the authority of the Commercial Item Test Program at FAR subpart 13.5 to January 1, 2015. FAR subpart 13.5 authorizes as a test program, the use of simplified procedures for the acquisition of certain commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $6.5 million ($12 million for acquisitions described in FAR 13.500(e)) including options, if the contracting officer can reasonably expect that offers will include only commercial items. This final rule extends the sunset date of the authority at FAR 13.500(d) from January 1, 2012, to January 1, 2015.

Item IV—Technical Amendments

Editorial changes are made at FAR 5.601, 7.105, 10.002, and 52.229–7.

Dated: February 20, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Dated: February 19, 2013.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: February 20, 2013.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: February 19, 2013.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2013–04595 Filed 2–27–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005–66; FAR Case 2013–003; Item I; Docket 2013–0003, Sequence 1]

RIN 9000–AM48

Federal Acquisition Regulation; Definition of Contingency Operation

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of ''contingency operation'' to address the statutory change to the definition made by the National Defense Authorization Act for Fiscal Year 2012.

DATES: *Effective* February 28, 2013.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before April 29, 2013 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–66, FAR Case 2013–003, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2013–003''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2013–003''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2013–003'' 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 FAC 2005–66, FAR Case 2013–003, 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 FAC 2005–66, FAR Case 2013–003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are publishing an interim rule amending the FAR to revise the definition of ''contingency operation'' at FAR 2.101 in accordance with the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81, enacted December 31, 2011). The definition of ''contingency operation'' was amended at 10 U.S.C. 101(a)(13) by adding ''12304a''.

Paragraph (a) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), entitled ''Authority to Order Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to Active Duty to Provide Assistance in Response to a Major Disaster or Emergency'', amends chapter 1209 of title 10, United States Code, by incorporating a new provision at section 12304a that provides for treatment of an operation as a contingency operation when the Secretary of Defense activates Reserves under the terms of 10 U.S.C. 12304a in response to a Governor's request for Federal assistance in responding to a major disaster or emergency declared by the President.

This interim rule adds a reference to section 12304a of Title 10, United States Code (from section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81)) to the list of references in section (2) of the definition of ''contingency operation'' in FAR 2.101, Definitions.

II. Executive Order 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. The Office of Information and Regulatory Affairs (OIRA) has deemed that 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, and that this rule is not a major rule under 5 U.S.C. 804.

III. 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.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

> Expanding the definition of ''contingency operation'' to include responding to a Presidential declaration of a major disaster or emergency (as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) will increase the circumstances under which ''contingency operations'' may be declared, thereby allowing defense and civilian agencies to raise thresholds, *i.e.,* micro-purchase, simplified acquisition threshold, for acquisitions made in support of emergencies in accordance with the authorities listed at FAR 18.201, and exercise preferences, such as local area set-asides or evaluation preferences.
>
> Because ''local businesses'' may vary in size and business ownership, and the locations of disasters vary, we do not expect the amendment to have a direct and sustained economic impact on a substantial number of small entities. However, there is the possibility that, because the Robert T. Stafford Disaster Relief and Emergency Assistance Act provides for a preference for local organizations, firms, and individuals when contracting for major disaster or emergency activities, implementation of the revised definition for ''contingency operation'' may increase opportunities for awarding contracts to small entities located at or near major disaster areas or emergency activities.
>
> In addition, FAR 19.502–2(a) requires simplified acquisitions during a contingency operation within the United States ($300,000 instead of $150,000) to be automatically reserved for small businesses (with the usual exceptions). The ability to restrict purchases up to two times the normal simplified acquisition threshold for small businesses will have a significant positive impact on small entities.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact 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 (FAC 2005–66, FAR Case 2013–003) in correspondence.

IV. Paperwork Reduction Act

The interim 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).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 515 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81) was enacted on December 31, 2011, and was effective upon enactment. Section 515 provided the legal basis for declaration of contingency operations and the exercise of related procurement flexibilities in support of Hurricane Sandy relief in October 2012. It remains necessary to implement the statute by revising the definition of ''contingency operation'' in FAR 2.101 to ensure regulatory conformance with statute. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subject in 48 CFR Part 2

Government procurement.

Dated: February 20, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 2 as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 2 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20115.

■ 2. Amend section 2.101, in paragraph (b)(2), by revising paragraph (2) of the definition ''Contingency operation'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Contingency operation * * *

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under sections 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of title 10 of the United States Code, Chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

* * * * *

[FR Doc. 2013–04599 Filed 2–27–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 16, and 52

[FAC 2005–66; FAR Case 2011–025; Item II; Docket 2011–0025, Sequence 1]

RIN 9000–AM28

Federal Acquisition Regulation; Changes to Time-and-Materials and Labor-Hour Contracts and Orders

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to provide additional guidance when raising the ceiling price or otherwise changing the scope of work for a time-and-materials (T&M) or labor-hour (LH) contract or order.

DATES: *Effective* April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–66, FAR Case 2011–025.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 77 FR 43780 on July 26, 2012, to address actions required when raising the ceiling price or otherwise changing the general scope of a T&M or LH contract or order. One respondent submitted a comment on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in the development of the final rule. The comment submitted agreed with the intent of the rule and praised it as a helpful change. The final rule is published without change from the proposed rule.

III. Executive Order 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. The Office of Information and Regulatory Affairs (OIRA) has deemed that 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, and that this rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

In finalizing FAR rule 2009–043 Time-and-Materials and Labor-Hour Contracts for Commercial Items it became apparent that the guidance in the FAR on raising the ceiling price for a T&M or LH contract or order was not clear or consistent throughout the FAR. This case was opened to clarify the procedures necessary to raise the ceiling price of a T&M or LH contract or order.

No significant issues were raised by the public and no changes were made to the proposed rule.

No comments were submitted by the Chief Counsel for Advocacy of the Small Business Administration.

This rule deals with the administration of T&M and LH contracts and orders and will have no direct effect on contractors. In FY2011 the Federal Government awarded 23,023 T&M and LH contracts or orders of which 6,315 went to small businesses. This rule will not affect how many small businesses are awarded this type of contract.

This rule does not add any new information collection requirements.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat

has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 8, 12, 16, and 52

Government procurement.

Dated: February 20, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 12, 16, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 12, 16, and 52 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

■ 2. Amend section 8.404 by revising paragraph (h)(3)(iv) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(h) * * *

(3) * * *

(iv) Prior to an increase in the ceiling price of a time-and-materials or labor-hour order, the ordering activity shall—

(A) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government and document the order file;

(B) Follow the procedures at 8.405–6 for a change that modifies the general scope of the order; and

(C) Comply with the requirements at 8.402(f) when modifying an order to add open market items.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 12.207 by revising paragraph (b)(1)(ii)(C) to read as follows:

12.207 Contract type.

* * * * *

(b)(1) * * *

(ii) * * *

(C) Prior to increasing the ceiling price of a time-and-materials or labor-hour contract or order, shall—

(*1*) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government;

(*2*) Document the decision in the contract or order file; and

(*3*) When making a change that modifies the general scope of—

(*i*) A contract, follow the procedures at 6.303;

(*ii*) An order issued under the Federal Supply Schedules, follow the procedures at 8.405–6; or

(*iii*) An order issued under multiple award task and delivery order contracts, follow the procedures at 16.505(b)(2).

* * * * *

PART 16—TYPES OF CONTRACTS

16.504 [Amended]

■ 4. Amend section 16.504 by removing from paragraph (a)(4)(v) ''(see 16.505(b)(6))'' and adding ''(see 16.505(b)(8))'' in its place.

■ 5. Amend section 16.505 by—

■ a. Removing from paragraph (b)(1)(iv)(E) ''paragraph (b)(4)'' and adding ''paragraph (b)(6)'' in its place;

■ b. Redesignating paragraphs (b)(4) through paragraphs (6) as paragraphs (b)(6) through (8), respectively; and

■ c. Adding new paragraphs (b)(4) and (5) to be read as follows:

16.505 Ordering.

* * * * *

(b) * * *

(4) For additional requirements for cost reimbursement orders see 16.301–3.

(5) For additional requirements for time-and-materials or labor-hour orders, see 16.601(e).

* * * * *

■ 6. Amend section 16.601 by—

■ a. Removing from paragraph (c)(2)(i) ''(see 16.601(e)(1))'' and adding ''(see 16.601(f)(1))'' in its place;

■ b. Revising the paragraph (d) introductory text and paragraph (d)(2);

■ c. Redesignating paragraph (e) as paragraph (f); and

■ d. Adding a new paragraph (e) to read as follows.

16.601 Time-and-materials contracts.

* * * * *

(d) *Limitations.* A time-and-materials contract or order may be used only if—

* * * * *

(2) The contract or order includes a ceiling price that the contractor exceeds at its own risk. Also see 12.207(b) for further limitations on use of time-and-materials or labor-hour contracts for acquisition of commercial items.

(e) *Post award requirements.* Prior to an increase in the ceiling price of a time-and-materials or labor-hour contract or order, the contracting officer shall—

(1) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government;

(2) Document the decision in the contract or order file; and

(3) When making a change that modifies the general scope of—

(i) A contract, follow the procedures at 6.303;

(ii) An order issued under the Federal Supply Schedules, follow the procedures at 8.405–6; or

(iii) An order issued under multiple award task and delivery order contracts, follow the procedures at 16.505(b)(2).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.216–29 [Amended]

■ 7. Amend section 52.216–29 introductory text by removing from ''16.601(e)(1)'' and adding ''16.601(f)(1)'' in its place.

52.216–30 [Amended]

■ 8. Amend section 52.216–30 by removing from the ''16.601(e)(2)'' and adding ''16.601(f)(2)'' in its place.

52.216–31 [Amended]

■ 9. Amend section 52.216–31 introductory text by removing ''16.601(e)(3)'' and adding ''16.601(f)(3)'' in its place.

[FR Doc. 2013–04600 Filed 2–27–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 2005–66; FAR Case 2013–007; Item III; Docket 2013–0007, Sequence 1]

RIN 9000–AM47

Federal Acquisition Regulation; Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the

Federal Acquisition Regulation (FAR) to implement section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. Section 822 extends the authority of the Commercial Item Test Program at FAR subpart 13.5 to January 1, 2015.

DATES: *Effective* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–66, FAR Case 2013–007.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the FAR to revise section 13.500(d) to implement section 822 of the NDAA for FY 2013, Public Law 112–239. Section 822 of the NDAA for FY 2013 strikes out ''2012'' in subsection (e) of section 4202 of the Clinger-Cohen Act of 1996 (division D of Public Law 104–106; 110 Stat. 652; 10 U.S.C. 2304 note) and inserts ''2015''. FAR subpart 13.5 authorizes as a test program, the use of simplified procedures for the acquisition of certain commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $6.5 million ($12 million for acquisitions described in FAR 13.500(e)) including options, if the contracting officer can reasonably expect that offers will include only commercial items. This final rule extends the sunset date of the authority at FAR 13.500(d) from January 1, 2012, to January 1, 2015.

II. Decision To Issue a Final Rule

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this case implements section 822 of the NDAA for FY 2013, which merely extends the end date of the Commercial Item Test Program from January 1, 2012, to January 1, 2015.

III. Executive Order 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. The Office of Information and Regulatory Affairs (OIRA) has deemed that 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, and that this rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not require publication for public comment.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 13

Government procurement.

Dated: February 20, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

13.500 [Amended]

■ 2. Amend section 13.500 by removing from paragraph (d) ''January 1, 2012'' and adding ''January 1, 2015'' in its place.

[FR Doc. 2013–04601 Filed 2–27–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 7, 10, and 52

[FAC 2005–66; Item IV; Docket 2013–0080; Sequence 2]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective* February 28, 2013.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street NE., 7th Floor, Washington, DC 20417, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–66, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 5, 7, 10, and 52, this document makes editorial changes to the FAR.

List of Subject in 48 CFR Parts 5, 7, 10, and 52

Government procurement.

Dated: February 20, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy

Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 7, 10, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 7, 10, and 52 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 5—PUBLICIZING CONTRACT ACTIONS

5.601 [Amended]

■ 2. Amend section 5.601 by removing from paragraphs (a), (b)(1), and (b)(2) ''*http://www.contractdirectory.gov/contractdirectory/*'' and adding ''*https://www.contractdirectory.gov/contractdirectory/*'' in its place.

PART 7—ACQUISITION PLANNING

7.105 [Amended]

■ 3. Amend section 7.105 by removing from paragraph (b)(1) ''*http://www.contractdirectory.gov/contractdirectory/*'' and adding ''*https://www.contractdirectory.gov/contractdirectory/*'' in its place.

PART 10—MARKET RESEARCH

10.002 [Amended]

■ 4. Amend section 10.002 by removing from paragraph (b)(2)(iv) ''*http://www.contractdirectory.gov/contractdirectory/*'' and adding ''*https://www.contractdirectory.gov/contractdirectory/*'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.229–7 by revising the section and clause headings to read as follows:

52.229–7 Taxes—Fixed-Price Contracts with Foreign Governments.

* * * * *

Taxes—Fixed—Price Contracts With Foreign Governments (Feb 2013)

* * * * *

[FR Doc. 2013–04603 Filed 2–27–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0078, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–66; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–66, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–66, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: February 28, 2013.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–66 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–66

Item	Subject	FAR case	Analyst
*I	Definition of Contingency Operation (Interim)	2013–003	Corrigan.
*II	Changes to Time-and-Materials and Labor-Hour Contracts and Orders	2011–025	Jackson.
III	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items.	2013–007	Jackson.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–66 amends the FAR as specified below:

Item I—Definition of Contingency Operation (FAR Case 2013–003) (Interim)

This interim rule amends the definition of ''contingency operation'' in FAR 2.101 to address the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–081). Expanding the definition to include responding to a major disaster or emergency will increase the circumstances under which agencies may raise the micro-purchase and simplified acquisition thresholds. This may increase opportunities for awarding contracts to small entities located at or near a major disaster area or emergency activities.

Item II—Changes to Time-and-Materials and Labor-Hour Contracts and Orders (FAR Case 2011–025)

This rule adopts as final a proposed rule implementing a policy that provides additional guidance to address actions required when raising the ceiling price for a time-and-materials (T&M) or labor-hour (LH) contract or order or otherwise changing the general scope of a T&M or LH contract or order. The rule provides guidance to contracting officers to address this issue for the respective areas of the FAR addressing T&M and LH contracts or orders, such as FAR sections 8.404, 12.207, and 16.601. This rule deals with the administration of T&M and LH contracts and orders and will have no direct effect on contractors. This rule will not affect how many small businesses are awarded this type of contract.

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2013–007)

This final rule amends the FAR to implement section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. Section 822 extends the authority of the Commercial Item Test Program at FAR subpart 13.5 to January 1, 2015. FAR subpart 13.5 authorizes as a test program, the use of simplified procedures for the acquisition of certain commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $6.5 million ($12 million for acquisitions described in FAR 13.500(e)) including options, if the contracting officer can reasonably expect that offers will include only commercial items. This final rule extends the sunset date of the authority at FAR 13.500(d) from January 1, 2012, to January 1, 2015.

Item IV—Technical Amendments

Editorial changes are made at FAR 5.601, 7.105, 10.002, and 52.229–7.

Dated: February 20, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–04604 Filed 2–27–13; 8:45 am]

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