AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 78 Thursday,

No. 50 March 14, 2013

Pages 16133–16398

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 9, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 78, No. 50

Thursday, March 14, 2013

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agriculture Department
See Food Safety and Inspection Service
See Forest Service

Census Bureau
RULES
Foreign Trade Regulations:
Mandatory Automated Export System Filing for all Shipments Requiring Shipper's Export Declaration Information, 16366–16391

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16269–16270

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16270–16271

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 16244–16245

Coast Guard
RULES
Safety Zones:
M/V XIANG YUN KOU and MODU NOBLE DISCOVERER; Resurrection Bay, Seward, AK, 16177–16180
PROPOSED RULES
Safety Zones:
Corp. Event Finale UHC, St. Thomas Harbor; St. Thomas, U.S. Virgin Islands, 16211–16213
V.I. Carnival Finale; St. Thomas Harbor; St. Thomas, U.S. Virgin Islands, 16208–16211
Special Local Regulations:
Dragging on Waccamaw, Atlantic Intracoastal Waterway; Bucksport, SC, 16205–16208

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Technical Information Service
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16245–16246, 16392–16393

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Disclosure and Reporting of CRA-Related Agreements, 16361–16362

Defense Department
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Service Contracts Reporting Requirements, 16268–16269

Drug Enforcement Administration
NOTICES
Manufacturers of Controlled Substances; Registrations:
Johnson Matthey, Inc., 16298

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Integrated Postsecondary Education Data System (2013–2016), 16259–16260

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16298–16299

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Paducah, 16260
Environmental Management Site-Specific Advisory Board, Savannah River Site; Correction, 16260–16261

Environmental Protection Agency
RULES
Ambient Nitrogen Dioxide Monitoring Requirements, 16184–16188

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Eurocopter Deutschland GmbH Helicopters, 16196–16198
Eurocopter France Helicopters, 16200–16202
The Boeing Company Airplanes, 16198–16200
Proposed Amendments of Class E Airspace:
Selmer, TN, 16202–16204
NOTICES
Meetings:
Research, Engineering and Development Advisory Committee, 16357

Federal Deposit Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16263–16265

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 16265

Federal Energy Regulatory Commission
RULES
Order on Rehearing and Clarification:
Availability of E-Tag Information to Commission Staff, 16133–16138
NOTICES
Combined Filings, 16261–16262
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:
J.P. Morgan Ventures Energy Corp., 16262
Tesoro Refining and Marketing Co. LLC, 16262–16263

Federal Motor Carrier Safety Administration
RULES
Transportation of Agricultural Commodities, 16189–16195

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16357–16358
Low-Speed, Wheel-Climb Derailments of Passenger Equipment with Stiff Suspension Systems, 16358–16361

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16265–16268

Fish and Wildlife Service
NOTICES
Comprehensive Conservation Plans and Environmental Assessments; Availability, etc.:
Great Lakes Islands Refuges, MI and WI, 16287–16288
Neal Smith National Wildlife Refuge, Jasper County, IA, 16286–16287
Permit Applications:
Endangered and Threatened Wildlife and Plants, 16288–16292
Endangered Species, 16292–16293

Food and Drug Administration
NOTICES
Meetings:
Advisory Committee for Reproductive Health Drugs and the Drug Safety and Risk Management Advisory Committee, 16271–16272

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission, Codex Committee on Pesticide Residues, 16243–16244

Foreign-Trade Zones Board
NOTICES
Applications for Reorganization under Alternative Site Framework:
Foreign-Trade Zone 72, Indianapolis, IN; Expansion of Service Area, 16246–16247
Authorization of Production Activities:
ZF Transmissions Gray Court, LLC, Foreign-Trade Zone 38, Spartanburg County, SC, 16247
Export-Only Manufacturing Authority Approval:
SGL Automotive Carbon Fibers, LLC, Foreign-Trade Zone 203, Moses Lake, WA, 16247

Forest Service
NOTICES
Meetings:
New Mexico Collaborative Forest Restoration Program Technical Advisory Panel, 16244

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Service Contracts Reporting Requirements, 16268–16269

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health

Historic Preservation, Advisory Council
NOTICES
Programmatic Agreements; Extension:
Weatherization Assistance Program, State Energy Program, and Energy Efficiency and Conservation Block Grant, 16275–16277

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Family Report, Moving-to-work Family Report, 16278–16279
Healthcare Facility Documents, 16279–16286
Low Income Housing Tax Credit Database, 16277–16278

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16362–16364

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 16247–16250
Countervailing Duty and Antidumping Duty Determinations; Results, Extensions, Amendments, etc.:
Hardwood and Decorative Plywood from People's Republic of China, 16250–16252
Expedited Sunset Reviews:
Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, and Thailand, 16252–16254

International Trade Commission
NOTICES
Determinations, etc.:
Certain Optoelectronic Devices for Fiber Optic Communications, Components Thereof, and Products Containing Same, 16296–16297
Earned Import Allowance Program:
Evaluation of Effectiveness of Program for Certain Apparel from Dominican Republic, Fourth Annual Review, 16297–16298

Justice Department
See Drug Enforcement Administration
RULES
Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees, 16138–16159
Application Procedures and Criteria for Approval of Providers of Personal Financial Management Instructional Course by United States Trustees, 16159–16177

Labor Department
See Employment and Training Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Filing of Plats of Survey:
Eastern States, 16294
Eastern States; Mississippi, 16293

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Service Contracts Reporting Requirements, 16268–16269

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 16272–16274
National Cancer Institute, 16272–16274
National Heart, Lung, and Blood Institute, 16274
National Institute on Aging, 16273

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Groundfish; Bering Sea and Aleutian Islands; Harvest Specifications, 16195
PROPOSED RULES
Magnuson–Stevens Act Provisions:
Fisheries of the Northeastern United States; 2013 Sector Operations Plans and Contracts and Allocation of Northeast Multispecies Annual Catch Entitlements, 16220–16242
NOTICES
Meetings:
Science Advisory Board, 16254–16255
Permits:
Endangered Species; File No. 17022, 16255

National Park Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Restoration of Mariposa Grove of Giant Sequoias, Yosemite National Park, Madera, and Mariposa Counties, CA, 16294–16295
Meetings:
Native American Graves Protection and Repatriation Review Committee, 16295–16296
Record of Decision for the Coral Reef Restoration Plan, Biscayne National Park, FL, 16296

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16300–16301
Meetings:
Proposal Review Panel for Physics, 16301–16302

National Technical Information Service
NOTICES
Meetings:
National Technical Information Service Advisory Board, 16255

Navy Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Commonwealth of Northern Mariana Islands Joint Military Training, 16257–16259
Disposal and Reuse of the Naval Weapons Station Seal Beach Detachment Concord, Concord, CA, 16255–16257
Meetings:
Board of Advisors to the President, Naval Postgraduate School, 16259

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 16302

Nuclear Regulatory Commission
NOTICES
Applications for Amendments to Facility Operating Licenses; Withdrawal:
Crystal River Unit 3 Nuclear Generating Plant, 16302
Applications for Export License Amendments:
High-enriched Uranium, 16303

Patent and Trademark Office
RULES
Changes to Implement the First Inventor to File Provisions of the Leahy–Smith America Invents Act; Correction, 16182–16184

Postal Service
PROPOSED RULES
Refunds and Exchanges, 16213–16220

Presidential Documents
ADMINISTRATIVE ORDERS
Iran; Continuation of National Emergency (Notice of March 12, 2013), 16395–16397

Saint Lawrence Seaway Development Corporation
RULES
Seaway Regulations and Rules:
Periodic Update, Various Categories, 16180–16182

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 16306–16308, 16334–16338
BATS Y-Exchange, Inc., 16308–16311

C2 Options Exchange, Inc., 16320–16324
Chicago Board Options Exchange, Inc., 16351–16356
Chicago Stock Exchange, Inc., 16311–16320
Financial Industry Regulatory Authority, Inc., 16341–16344
International Securities Exchange, LLC, 16338–16341
Municipal Securities Rulemaking Board, 16346–16349
NASDAQ OMX BX, Inc., 16303–16306, 16349–16351
NASDAQ OMX PHLX LLC, 16344–16345
National Stock Exchange, Inc., 16325–16329
NYSE Arca, Inc., 16329–16331
NYSE MKT LLC, 16332–16334

State Department
NOTICES
Restrictions on Assistance; Waivers:
Central Government of Somalia, 16356

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Wyoming Regulatory Program, 16204–16205

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Saint Lawrence Seaway Development Corporation
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits, 16356–16357

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Advisory Committee on Former Prisoners of War, 16364

Wage and Hour Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16299–16300

Separate Parts In This Issue

Part II
Commerce Department, Census Bureau, 16366–16391
Commerce Department, 16392–16393

Part III
Presidential Documents, 16395–16397

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

12957 (See Notice of March 12, 2013).....16397
12959 (See Notice of March 12, 2013).....16397
13059 (See Notice of March 12, 2013).....16397
13553 (See Notice of March 12, 2013).....16397
13574 (See Notice of March 12, 2013).....16397
13590 (See Notice of March 12, 2013).....16397
13599 (See Notice of March 12, 2013).....16397
13606 (See Notice of March 12, 2013).....16397
13608 (See Notice of March 12, 2013).....16397
13622 (See Notice of March 12, 2013).....16397
13628 (See Notice of March 12, 2013).....16397

Administrative Orders:

Notices:
Notice of March 12, 2013 16397

14 CFR

Proposed Rules:

39 (3 documents) 16196, 16198, 16200
71.....16202

15 CFR

30.....16366

18 CFR

366.....16133

28 CFR

58 (2 documents) 16138, 16159

30 CFR

Proposed Rules:

950.....16204

33 CFR

165.....16177
401.....16180

Proposed Rules:

100.....16205
165 (2 documents) 16208, 16211

37 CFR

1.....16182

39 CFR

Proposed Rules:

111.....16213

40 CFR

58.....16184

49 CFR

382.....16189
383.....16189
390.....16189
391.....16189
395.....16189
396.....16189

50 CFR

679.....16195

Proposed Rules:

648.....16220

Rules and Regulations

Federal Register
Vol. 78, No. 50
Thursday, March 14, 2013

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

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 366

[Docket No. RM11–12–001; Order No. 771–A]

Availability of E-Tag Information to Commission Staff

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing and clarification.

SUMMARY: In this order on rehearing and clarification, the Federal Energy Regulatory Commission (the Commission) clarifies that: Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of Order No. 771; validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the Commission in the CC field; the requirement for the Commission to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; the Commission will deem all e-Tag information made available to the Commission pursuant to Order No. 771 as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; the Commission is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and the requirement on Balancing Authorities to ensure Commission access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

FOR FURTHER INFORMATION CONTACT:

Maria Vouras (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8062, Email: *maria.vouras@ferc.gov.*

William Sauer (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6639, Email: *william.sauer@ferc.gov.*

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8321, Email: *gary.cohen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Order on Rehearing and Clarification

Table of Contents

I. Overview 2
II. Introduction 3
III. Discussion 9
A. Requests for Extensions of Time 9
B. Requests for Rehearing and Clarification 14
1. Validation of the Commission on E-Tags 14
2. Prospective Effect of Order No. 771 22
3. Confidentiality of E-Tag Data Provided to Commission 24
4. Internal E-Tags 31
5. Balancing Authorities 34

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.
Issued March 8, 2013.

1. On December 20, 2012, the Commission issued Order No. 771, a Final Rule that amended the Commission's regulations to grant the Commission access, on a non-public and ongoing basis, to the complete electronic tags (e-Tags) used to schedule the transmission of electric power interchange transactions in wholesale markets.[1] Order No. 771 requires e-Tag Authors (through their Agent Service) and Balancing Authorities (through their Authority Service), beginning on March 15, 2013, to take appropriate steps to ensure Commission access to the e-Tags covered by this Final Rule by designating the Commission as an addressee on the e-Tags. In response to this rule, requests for rehearing and/or clarification were filed by four entities. The National Rural Electric Cooperative Association (NRECA) individually filed a request for rehearing and also filed, together with Edison Electric Institute (EEI), a joint request for rehearing and clarification that included a motion for an expedited response to its motion for an extension of the compliance deadlines prescribed in the rule. Southern Company Services, Inc. (Southern) similarly filed a request for rehearing and clarification that included a request for expedited consideration of a request for a time extension. In addition, Open Access Technology International, Inc. (OATI) filed a request for clarification. A motion for leave to answer and answer was filed by PJM Interconnection, L.L.C. (PJM) and Southwest Power Pool, Inc. (SPP) (collectively, PJM/SPP). In this order, the Commission addresses only those issues that need to be answered on an expedited basis to allow entities affected by this rule to understand their obligations and comply with the requirement to ensure Commission access to the e-Tags covered by the Final Rule in a timely manner. In due course, the Commission will issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification. As discussed further below, the Commission also issued a notice on February 1, 2013, granting limited time extensions but requiring compliance by March 15, 2013 for the bulk of the requirements under the rule.

[1] *Availability of E-Tag Information to Commission Staff,* Order No. 771, 77 FR 76367 (Dec. 28, 2012), FERC Stats & Regs ¶ 31,339 (2012).

I. Overview

2. In this order, the Commission clarifies that: (1) Balancing Authorities and their Authority Services [2] will have until 60 days after publication of this order to implement the validation requirements of Order No. 771; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the Commission in the CC field; [3] (3) the requirement for the Commission to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the Commission will deem all e-Tag information made available to the Commission pursuant to Order No. 771 as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the Commission is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure Commission access to e-Tags pertains to the Sink Balancing Authority and not other Balancing Authorities that may be listed on an e-Tag.

II. Introduction

3. E-Tags, also known as Requests for Interchange (RFI), are used to schedule interchange transactions in wholesale markets. Generally, e-Tags document the movement of energy across an interchange over prescribed physical paths, for a given duration, and for a given energy profile(s), and include information about those entities with financial responsibilities for the receipt and delivery of the energy. As stated in Order No. 771, the Commission determined that access to complete e-Tag data [4] will help the Commission in its efforts to detect market manipulation and anti-competitive behavior, monitor the efficiency of the markets, and better inform Commission policies and decision-making.[5]

4. As the Commission explained in Order No. 771, the Commission needs e-Tag data covering all transactions involving interconnected entities listed on the e-Tag because the information is necessary to understand the use of the interconnected electricity grid, and particularly those transactions occurring at interchanges.[6] The Commission also found in Order No. 771 that regular access to e-Tags for power flows across interchanges will make it possible for the Commission to identify or analyze various behaviors by market participants to determine if they are part of a potentially manipulative scheme(s).[7] As demonstrated by recent investigations by the Commission's Office of Enforcement, for example, e-Tag information can enable the Commission to investigate whether entities may be engaging in manipulative schemes involving the circular scheduling of imports and exports into a market to benefit other positions held by these entities.[8] The Commission also noted that e-Tag access will help the Commission to understand, identify, and address instances where interchange pricing methodologies or scheduling rules result in inefficiencies and increased costs to market participants collectively.[9] The Commission also noted that access to e-Tag information will allow the Commission to determine whether the requirements of the mandatory business practice standards related to e-Tags have been met.[10]

5. In Order No. 771, the Commission required e-Tag Authors, through their Agent Service, and Balancing Authorities, through their Authority Service, to take appropriate steps to ensure that the Commission is included as an addressee on all e-Tags for interchange transactions scheduled to flow into, out of, or within the United States' portion of the Eastern or Western Interconnection, or into Electric Reliability Council of Texas (ERCOT) and from the United States' portion of the Eastern or Western Interconnection; or from ERCOT into the United States' portion of the Eastern or Western Interconnection.[11] The Commission required that the e-Tag Authors include the Commission on the CC list of entities with view-only rights to the e-Tags described above. Further, the Commission required that the Balancing Authorities (located within the United States) validate the inclusion of the Commission on the CC list of the e-Tags before those e-Tags are electronically delivered to an address specified by the Commission.[12]

6. Order No. 771 also required that Regional Transmission Organizations (RTO), Independent System Operators (ISO) and their Market Monitoring Units (MMU) shall be afforded access to complete e-Tags, upon request to e-Tag Authors and Authority Services, subject to their entering into appropriate confidentiality agreements.

7. As noted above, requests for rehearing and/or clarification of Order No. 771 were filed by four entities.[13] In addition, PJM/SPP filed a motion for leave to answer and answer in response to the requests for rehearing and clarification. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits an answer to a request for rehearing.[14] Accordingly, we will reject the answer.

8. The main concern raised by EEI/NRECA in its joint request for rehearing and clarification pertains to the requirement that Sink Balancing Authorities and their Authority Services must validate that the Commission is a CC recipient of the e-Tags.[15] NRECA's individually filed rehearing request questions the Commission's legal authority to require access to e-Tag data. Southern filed a request for rehearing and clarification raising a number of issues, including: the responsibilities of Balancing Authorities with respect to e-Tag data; maintaining the confidentiality of e-Tag data; the applicability of the Final Rule to new e-Tags; and what e-Tag data can be

[2] An Authority Service is the ''focal point for all interactions with an e-Tag and maintains the single authoritative 'copy of record' for each e-Tag received.'' *See NAESB Electronic Tagging Functional Specifications,* Version 1.8.1.1, section 1.4.1.2, at p. 24. Every Sink Balancing Authority is responsible for registering an URL of an Authority Service. The Authority Service forwards all valid received e-Tag requests to each entity identified in the transaction as having ''approval'' or ''viewing'' rights over the request and collects approvals/denials. The Authority Service then sends final disposition of the request to each entity in the distribution list. *See id.* Authority Services are currently provided by a small number of commercial software vendors.

[3] In previous times, the term ''CC'' referred to those who would be given a carbon copy; the term has been carried over into the electronic age. E-Tag Authors may include a CC list (Carbon Copy List) on their e-Tags specifying the entities that will be provided with a copy of the e-Tag without being given approval rights. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, section 1.4.11, at p. 37.

[4] Order No. 771 defined ''complete e-Tags'' for purposes of this rulemaking proceeding as: (1) e-Tags for interchange transactions scheduled to flow into, out of, or within the United States' portion of the Eastern or Western Interconnection, or into the Electric Reliability Council of Texas and from the United States' portion of the Eastern or Western Interconnection, or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection; and (2) information on every aspect of each such e-Tag, including all applicable e-Tag IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules. *See* Order No. 771, FERC Stats & Regs ¶ 31,339 at n.2.

[5] Order No. 771, FERC Stats & Regs ¶ 31,339 at P 27.

[6] *Id.*

[7] *Id.* P 28.

[8] *Id.* P 28, n.72 (citing *Gila River Power, LLC,* 141 FERC ¶ 61,136 (2012)).

[9] *Id.* P 29.

[10] *Id.*

[11] *Id.* P 1; *see also* 18 CFR 366.2(d).

[12] *Id.* P 41.

[13] *See supra* P 1.

[14] 18 CFR 713(d) (2012).

[15] EEI/NRECA at 2.

requested by RTO/ISO MMUs. OATI [16] filed a request for clarification asking three questions: (1) Whether the requirements in the Final Rule pertain only to Sink Balancing Authorities; (2) what e-Tag data can be requested by RTOs, ISOs, and MMUs; and (3) what confidentiality restrictions should apply to such requests. As stated above, in this order, the Commission will address only those issues that require an expedited response from the Commission to allow entities affected by this rule to understand their obligation to ensure Commission access to e-Tag data and comply with the rule in a timely manner. The Commission will issue an additional rehearing order in due course to address remaining issues, including its legal authority to access e-Tags.

III. Discussion

A. Requests for Extensions of Time

1. Comments

9. NRECA requests that the Commission issue an interim order on rehearing extending Order No. 771's compliance deadline of March 15, 2013 until 60 days after the Commission acts on the merits of NRECA's request for rehearing. EEI/NRECA also filed a motion for expedited extension of the March 15, 2013 compliance deadline, asking that the Commission grant the motion by February 15, 2013.[17] Specifically, EEI/NRECA ask the Commission to extend the deadline for including the Commission in the CC field of the requisite e-Tags to 60 days after the Commission responds to the EEI/NRECA request for rehearing and clarification and, if the Commission retains the validation requirement, the Commission should extend the deadline until 60 days after the North American Energy Standards Board's (NAESB) e-Tag protocols are modified to implement the requirement.[18] Southern also filed a motion for extension of time, asking that the Commission extend the effective date to 60 days after NAESB implements the revisions to its protocols to automate the system required to implement the Final Rule.

2. Commission Determination

10. The Commission considers it important to begin obtaining the data on e-Tags as soon as possible so that we can begin to analyze the data and enhance our ability to carry out our regulatory missions of detecting market manipulation and inefficient market rules and taking appropriate action, where needed, to address any such problems. Accordingly, the Commission is averse to allowing any unnecessary delays before the requirements of Order No. 771 become effective.

11. Nevertheless, when the Commission reviewed the requests for rehearing and for clarification, we determined that some of the rehearing requests asked important questions that needed explanation before action could be taken to comply with the rule. For this reason, the Commission issued a notice, on February 1, 2013, extending the time until Balancing Authorities are to be required to validate the inclusion of the Commission on e-Tags until 30 days after the issuance of an order, this order, which clarifies exactly what is entailed by such validation. To ensure that Balancing Authorities have sufficient time to implement this requirement, this order extends the time for Balancing Authorities to comply with the validation requirement until 60 days from the date of publication of this order in the **Federal Register**.

12. Given the importance of the objectives served by issuance of Order No. 771, our notice of a limited time extension denied all other requested time extensions and affirmed the time deadlines prescribed in the Final Rule in all other respects. Therefore, given our clarification in this order of the obligations of Sink Balancing Authorities regarding the validation of Commission access to e-Tags, Balancing Authorities will have until 60 days after publication of this order to implement the validation requirement, as clarified below.

13. We also note that requests for rehearing and/or clarification do not act as a stay of the compliance obligations prescribed in final orders.[19] As stated in the February 1, 2013 notice, full compliance with all other obligations under Order No. 771 is required by March 15, 2013.

B. Requests for Rehearing and Clarification

1. Validation of the Commission on E-Tags

a. Comments

14. EEI/NRECA and Southern encourage the Commission to eliminate the validation requirement if validation means that the Sink Balancing Authority or its Authority Service should reject an e-Tag that does not include the Commission in the CC field.[20] EEI/NRECA and Southern states that if validation means rejecting e-Tags that do not include the Commission, then the Commission should direct the industry to adjust the NAESB protocols to enable an automated process for validation and careful implementation of the requirement.[21]

15. According to Southern, rejecting e-Tags that do not CC the Commission could result in significant commercial and reliability disruptions.[22] EEI/NRECA also assert that rejecting e-Tags could disrupt necessary power deliveries and implementing the change via changes to the NAESB e-Tag protocols would avoid or minimize negative consequences.[23] EEI/NRECA add that if a Balancing Authority or Authority Service reject an e-Tag and, thus, the power delivery it covers, the e-Tag Author's only option may be to recreate the e-Tag if time and circumstances permit.[24]

16. EEI/NRECA add that Sink Balancing Authorities and their Authority Services may mistakenly reject an e-Tag and associated delivery in error, when in fact the particular e-Tag is not required to be CC'd to the Commission, such as for an internal or international transaction.[25] EEI/NRECA state that developing and implementing such a change to NAESB protocols would take more time than the March 15, 2013 implementation deadline allows, possibly a year or more, especially if NAESB addresses e-Tag issues other than validation.[26] Southern states that, at most, the Commission should require the Authority Services to add the Commission to the CC field, when appropriate, but states that even this effort will require a reasonable amount of time to provide for software changes and implementation.[27]

b. Commission Determination

17. The Commission has been asked to clarify whether the Commission's directive in Order No. 771 (that Balancing Authorities, through their Authority Services, validate that the Commission be given access to e-Tags) requires rejection of e-Tags that fail to include the Commission on the CC list as required, or merely requires Balancing Authorities to notify the Commission that the e-Tag Author has failed to include the Commission on an

[16] OATI states that it provides software solutions in the North American energy industry, including e-Tag services (through OATI webTag). OATI states it also provides Agent Services and Authority Services to e-Tag Authors and Balancing Authorities, respectively. *See* OATI at 1.

[17] EEI/NRECA at 3.

[18] *Id.* at 5.

[19] *See* 18 CFR 713(e) (2012).

[20] EEI/NRECA at 4; Southern at 5–6.

[21] EEI/NRECA at 2; Southern at 6.

[22] Southern at 6.

[23] EEI/NRECA at 2, 4.

[24] *Id.* at 7.

[25] *Id.*

[26] *Id.*

[27] Southern at 6.

e-Tag. We also have been asked to abandon or delay this requirement, if validation means that tags that fail to include the Commission on the CC list are to be rejected.

18. Our requirement in Order No. 771 for validation of e-Tags by Balancing Authorities, through their Authority Services, means that Balancing Authorities are to reject e-Tags that fail to include the Commission on the CC list and not merely notify the Commission that this requirement has not been met; the Commission's objective is to gain access to the e-Tags covered by the Final Rule. Furthermore, we reject the suggestion that we abandon this requirement as the Commission is interested in actually obtaining access to the information and is not merely interested in compiling a list of those that fail to provide the required access to the information. Without a validation process in place, the Commission would need to employ additional, less efficient checks to ensure that the Commission is obtaining consistent access to all relevant e-Tags.[28]

19. We also reject the suggestions by EEI/NRECA and Southern that we should delay implementation of the validation requirement until such time as the industry, through NAESB, can develop a formalized automated process. While we have no objection to the industry formalizing the manner in which validation will be performed by asking NAESB to develop a standard covering this, we are unwilling to allow such a process to delay Commission access to this important information and, accordingly, decline to defer compliance until the development of a formal NAESB business practice standard on this topic.[29]

20. Additionally, as discussed above, the Commission has already provided Balancing Authorities (and their Authority Services) with an extension to accommodate their devising a system to comply with the requirement that they must validate Commission access to e-Tags until 60 days after the publication of this order. By extending the validation requirement for Balancing Authorities until 60 days after the publication of this order, rather than March 15, 2013 (the implementation date for aspects of Order No. 771), we are providing e-Tag Authors and Balancing Authorities a testing period before all requirements of Order No. 771 take effect. During this testing period, e-Tag Authors will be able to comply with the Final Rule without concern over whether their e-Tags will be rejected. Also during this period, the Balancing Authorities (through their Authority Service) can assess e-Tags submitted by e-Tag Authors after-the-fact and alert e-Tag Authors to practices that would result in rejection once the validation mechanisms are in place. Accordingly, we believe this staggered approach will allow for the development of an automated process and limit any operational or reliability issues associated with validation requirements by giving e-Tag Authors and Balancing Authorities time to familiarize themselves with the process of providing the Commission with access to e-Tags, prior to all of the requirements of Order No. 771 taking effect.

21. In its comments, OATI states that it plans to offer additional automated functionality to Balancing Authorities to further enable them to satisfy their obligations under the Final Rule.[30] OATI further notes that scoping, development, testing, training and deployment of automated functionality typically requires at least four weeks, and sometimes longer, depending on the particular service.[31] Staff's research indicates that the vast majority of Balancing Authorities (i.e., 135 out of 148 total Balancing Authorities registered in the OATI webRegistry) rely on OATI to provide their Authority Service; nine Balancing Authorities rely on another e-Tag service provider; three do not have a registered Authority Service; and one appears to provide its own Authority Service.[32] Given the extension of time granted with regard to the validation requirement, we anticipate that Balancing Authorities and their Authority Services will be able to validate the Commission's inclusion on e-Tags once this requirement takes effect.

2. Prospective Effect of Order No. 771

a. Comments

22. EEI/NRECA and Southern seek clarification that the requirement to CC the Commission on e-Tags applies only to e-Tags created starting on or after the Order No. 771 compliance date, not ones created prior to the compliance date even if covering deliveries occurring after that date.[33] EEI/NRECA and Southern note that, under the current NAESB protocols, an e-Tag cannot be modified after it has been created. Therefore, EEI/NRECA argue that modification of e-Tags created prior to the compliance date for delivery after the compliance date would entail terminating or recreating the e-Tags.[34] Southern argues that, if all e-Tags already generated before the effective date of the Final Rule must be stopped and regenerated when the new requirements become effective, the result will be massive disruption of physical power transfers.[35]

b. Commission Determination

23. We clarify that the requirement for the Commission to be included in the CC field on the e-Tags applies only to e-Tags created on or after the compliance date of Order No. 771 (i.e., March 15, 2013). Accordingly, pre-existing e-Tags do not need to be stopped, regenerated, or otherwise modified.

3. Confidentiality of E-Tag Data Provided to Commission

a. Comments

24. EEI/NRECA encourage the Commission to ensure that its recently revised regulations for privileged and confidential information at 18 CFR Part 388 will not inadvertently create any problems for protecting the confidentiality of e-Tag data.[36] EEI/NRECA argue that, as amended, 18 CFR 388.112(b)(1) generally requires parties filing confidential information to identify the filing as containing confidential information with certain markings on each page and justification for non-release and other requirements that are not workable in the e-Tag context.[37]

25. Similarly, Southern asks the Commission to clarify that Balancing Authorities are not obligated to put a ''confidentiality stamp'' on e-Tags, as required for documents to prevent them from disclosure.[38] EEI/NRECA and Southern ask the Commission to specify that it will handle all e-Tag information as confidential without the need to comply with the requirements of section 388.112 of the Commission's regulations and that the Commission will not

[28] Neither the Final Rule nor this order preclude Sink Balancing Authorities and their Authority Services from conferring and agreeing on the best way to implement the validation requirement within the time limits provided by this order.

[29] We note, however, that in its comments filed on March 26, 2012, in response to the Notice of Proposed Rulemaking in this proceeding, NAESB stated that there may be ''fairly simple technical approaches'' to meet the Commission's request to receive all e-Tags used to schedule the transmission of power.

[30] OATI at 2.

[31] *Id.* at 2.

[32] These figures are based on staff analysis of the OATI webRegistry, or NAESB Electric Industry Registry, published on February 22, 2013.

[33] EEI/NRECA at 9; Southern Companies at 3, 7.

[34] EEI/NRECA at 9.

[35] Southern at 7.

[36] EEI/NRECA at 5.

[37] *Id.* at 10.

[38] *Id.* at 3, 8.

release the information to third parties in response to a FOIA request without first notifying the e-Tag Author and giving the e-Tag Author adequate time to respond to the request by justifying non-disclosure.[39] EEI/NRECA add that any information the author identifies as confidential is protected by a confidentiality agreement if it is released in response to a FOIA request.

26. Southern asks the Commission to clarify that, once e-Tag information is provided to the Commission, it meets the requirements of exemption 4 under FOIA, as it is information that would be otherwise privileged or confidential.[40] In addition, Southern states that Balancing Authorities should not be liable for any disclosure of confidential e-Tag information, including inadvertent publication of e-Tag information by a recipient of e-Tag data under Order No. 771 and publication of e-Tag data subject to FOIA.[41]

b. Commission Determination

27. In light of the concerns raised by EEI/NRECA with respect to claims of privileged or confidential information, the Commission will handle e-Tag information as privileged or confidential under section 388.112 of the Commission's regulations without the need for e-Tag Authors and Balancing Authorities to include certain markings required under section 388.112(b)(1) of the Commission's regulations.[42] In other words, the Commission will deem e-Tags made available to the Commission under Order No. 771 as universally being provided subject to a request for confidential treatment and e-Tag Authors do not need to separately make a request for confidential treatment in each instance for this to apply. This does not, however, foreclose the rights of persons to make a request for disclosure of this information under the Freedom of Information Act and the provisions of 18 CFR 388.108.

28. We decline to specify, as requested by Southern, that e-Tag information provided to the Commission meets the requirements of exemption 4 of FOIA because it is information that would be otherwise privileged or confidential. Order No. 771 acknowledged that some of the information contained in the e-Tags is likely to be commercially sensitive and that disclosure of such data may result in competitive harm to market participants and the market as a whole without reasonable confidentiality restrictions.[43] To the extent a person files a request to obtain e-Tag data from the Commission under the Freedom of Information Act (FOIA), we expect that any commercially-sensitive e-Tag data would be protected from disclosure if it satisfies the requirements of FOIA's exemption 4, which protects trade secrets and commercial or financial information that is privileged or confidential.[44] Nonetheless, such requests must be evaluated on a case-by-case basis and we cannot peremptorily foreclose such requests, as requested by Southern.

29. In addition, we find that, consistent with the procedures set forth in section 388.112(d) of the Commission's regulations, the Commission will not release e-Tag information to third parties in response to a FOIA request without first notifying the e-Tag Author and any relevant Sink Balancing Authority and giving the e-Tag Author and any Sink Balancing Authority an opportunity (at least five calendar days) in which to comment in writing on the request. If the e-Tag Author objects to the release of e-Tag information, and if the Commission or an appropriate Commission official determines that such information should be released, notice will be given to the e-Tag Author no less than five calendar days before disclosure, pursuant to section 388.112(e) of the Commission's regulations.

30. As to Southern's request that we determine that Balancing Authorities will not be held liable for inadvertent disclosure of confidential e-Tag information, we will address this request in our further rehearing order.

4. Internal E-Tags

a. Comments

31. EEI/NRECA ask the Commission to clarify that it is not seeking e-Tags that are used within a Balancing Authority for internal purposes, such as where there is only one ''party'' to an e-Tag.[45] EEI/NRECA state that such e-Tags are often used by companies and cooperatives to manage their internal systems within their service territories.[46]

b. Commission Determination

32. As noted above, e-Tags are used to schedule interchange transactions in wholesale markets, which are defined as ''[a]n agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.'' [47] However, in practice, as noted by EEI/NRECA, e-Tags can also be used to schedule internal, or Intra-Balancing Authority, transactions. Business practice standards related to Intra-Balancing Authority e-Tags are the same as the standards that apply to e-Tags that cross Balancing Authority Area boundaries.[48] As such, we find that treating Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags would be consistent with, and least disruptive of, established industry practice and fall within the categories of e-Tags that we required to be made available to the Commission in Order No. 771. Therefore, we clarify that e-Tag Authors, through their Agent Service, must include the Commission on the CC list of entities with view-only rights for all e-Tags covered by the Final Rule, which include intra-Balancing Authority e-Tags of the type described by EEI/NRECA.

33. Additionally, requiring that all e-Tags, including Intra-Balancing Authority e-Tags, include the Commission on the CC list simplifies compliance with the requirements of Order No. 771 for e-Tag Authors and Sink Balancing Authorities. Specifically, if the Commission created an exception whereby a limited number of Intra-Balancing Authority e-Tags do not include the Commission on the CC list, then Balancing Authorities would need to take additional steps to ensure that their validation procedures did not incorrectly reject these e-Tags. Simply put, by not allowing this exception for Intra-Balancing Authority e-Tags, Balancing Authorities with validation responsibilities would simply check

[39] EEI/NRECA at 10; Southern at 3, 9.

[40] Southern at 3, 8.

[41] *Id.* at 9.

[42] Section 388.112(b)(1) of the Commission's regulations, 18 CFR 388.112(b)(1), requires, among other matters, certain markings to be placed on ''documents'' that are filed with the Commission. Specifically, section 388.112(b)(1) provides: ''A person requesting that a document filed with the Commission be treated as privileged or CEII must designate the document as privileged or CEII in making an electronic filing or clearly indicate a request for such treatment on a paper filing. The header of the first page of the cover sheet or transmittal letter and of the pages or portions of the document containing material for which privileged treatment is claimed should be clearly marked in bold, capital lettering, indicating that it contains privileged, confidential and/or Critical Energy Infrastructure Information, as appropriate, and market □ DO NOT RELEASE. □''

[43] Order No. 771, FERC Stats & Regs ¶ 31,339 at P 58.

[44] *Id.*

[45] EEI/NRECA at 8.

[46] *Id.* at 8.

[47] *See* Order No. 771, FERC Stats & Regs ¶ 31,339 at P 3 n.8 (citing NERC's *Glossary of Terms Used in Reliability Standards* (updated November 15, 2012), *available at http://www.nerc.com/files/Glossary_of_Terms.pdf).*

[48] In particular, the NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Coordinate Interchange) requirement 004–1.1 provides that ''[t]o the extent that intra BA transactions are submitted as a RFI, those transactions will be subject to all provisions of this Business Practice Standard WEQ–004.''

only the CC list of an e-Tag to see if the Commission is included. If an Intra-Balancing Authority exception were created, Balancing Authorities with validation responsibilities would first need to check the market and physical segments of an e-Tag to see if they met additional criteria, and then check to see if the Commission is included on the CC list. Likewise, e-Tag Authors would have to develop additional procedures to ensure an Intra-Balancing Authority exception was appropriately implemented.

5. Balancing Authorities

a. Comments

34. OATI states that Order No. 771 creates certain obligations on ''Balancing Authorities'' and notes that multiple Balancing Authorities can be listed on a single e-Tag. OATI seeks clarification that the Final Rule refers to the Balancing Authority serving as the Sink Balancing Authority and providing e-Tag Authority Services for the particular e-Tag transaction, rather than to other Balancing Authorities that may be listed on the e-Tag.[49]

b. Commission Determination

35. Order No. 771 imposes certain requirements on Balancing Authorities located within the United States with respect to ensuring Commission access to e-Tags.[50] In response to OATI's question, we clarify that the requirements on Balancing Authorities to ensure Commission access to e-Tags relate only to the Sink Balancing Authority on an e-Tag and not to other Balancing Authorities that may be included on an e-Tag.[51]

The Commission orders:

The Commission hereby grants rehearing in part, and denies rehearing in part, as discussed in the body of the order.

[49] OATI at 6.

[50] *See* Order No. 771, FERC Stats & Regs ¶ 31,339 at P 39; 18 CFR 366.2(d).

[51] *See, e.g.,* NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Coordinate Interchange) requirement 004–1 (''All requests to implement bilateral Interchange * * * between a Source BA and Sink BA, where one or both BAs are located in either the Eastern or Western Interconnection, shall be accomplished by the submission of a completed and accurate RFI) to the Sink BA's registered e-Tag Authority Service'') and requirement 004–2 (''Until other means are adopted by NAESB, the primary method of submitting the RFI shall be an e-Tag communicated to and managed by the Sink BA's registered e-Tag authority service using protocols compliant with the Version 1.8.1 Electronic Tagging Functional Specification.'' (Emphasis added.)). *See* NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Version 003), published July 31, 2012.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05856 Filed 3–13–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No EOUST 102]

RIN 1105–AB17

Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Final rule.

SUMMARY: This final rule (''rule'') sets forth procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved nonprofit budget and credit counseling agencies (''credit counseling agencies'' or ''agencies'') satisfy all prerequisites of the United States Code, as implemented under this rule. Under the current law, an individual may not be a debtor under title 11 of the United States Code, unless during the 180-day period preceding the date of filing a bankruptcy petition, the individual receives adequate counseling from a credit counseling agency that is approved by the United States Trustee. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved credit counseling agencies must meet. Under this rule, United States Trustees will approve applicants for inclusion on publicly available agency lists in one or more federal judicial districts if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such approval, a credit counseling agency shall be authorized to provide credit counseling in a federal judicial district during the time the agency remains approved.

EOUST intends to add to its regulations governing credit counseling agencies, two new provisions not previously included in the proposed rule on this subject. A new section 58.17(c)(11) will require agencies to notify the United States Trustee of certain actions pursuant to 11 U.S.C. 111(g)(2) or other consumer protection statutes, such as an entry of judgment or mediation award, or the agency's entry into a settlement order, consent decree, or assurance of voluntary compliance. The second provision will amend section 58.20(j) to require an agency to assist an individual with limited English proficiency by expeditiously directing the individual to an agency that can provide counseling in the language of the individual's choice. Because these provisions were not discussed in the proposed rule published on February 1, 2008, EOUST will publish another Notice of Proposed Rulemaking requesting public comment with respect to these two provisions.

DATES: *Effective Date:* This rule is effective April 15, 2013.

ADDRESSES: EOUST, 441 G Street NW., Suite 6150, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Doreen Solomon, Assistant Director for Oversight on (202) 307–2829 (not a toll-free number), Wendy Tien, Deputy Assistant Director for Oversight on (202) 307–3698 (not a toll-free number), or Larry Wahlquist, Office of the General Counsel on (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On July 5, 2006, EOUST published an interim final rule entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees* (''Interim Final Rule''). 71 FR 38,076 (July 5, 2006). Due to the necessity of quickly establishing a regulation to govern the credit counseling application process, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking (''proposed rule''). On February 1, 2008, at 73 FR 6,062, EOUST published a proposed rule on this topic in an effort to maximize public input, rather than publishing a final rule after publication of the Interim Final Rule. Before the comment period closed on April 1, 2008, EOUST received forty seven comments. The comments received and EOUST's responses are discussed below. This rule finalizes the proposed rule with changes that, in some cases, reduce the burden on credit counseling agencies while maintaining adequate protections for consumers.

This rule implements the credit counseling sections of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (''BAPCPA''), Public Law 109–8, 119 Stat. 23, 37, 38 (April 20, 2005), which are codified at 11 U.S.C. 109(h) and 111. Effective October 17, 2005, an individual may not be a debtor under title 11 of the United States Code unless during the 180-day period preceding the date of filing a bankruptcy petition, the individual

receives adequate counseling from an approved credit counseling agency. 11 U.S.C. 109(h)(1) and 111; *see also* H.R. Rep. 109–31, pt. 1 at 2 (providing that the Bankruptcy Code ''requires debtors to receive credit counseling before they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy, its alternatives, and consequences'').

Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of credit counseling agencies for inclusion under 11 U.S.C. 111(a)(1) on publicly available agency lists in one or more United States district courts. Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become an approved credit counseling agency only after the United States Trustee has thoroughly reviewed the applicant's (a) qualifications, and (b) services. 11 U.S.C. 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. *Id.* EOUST reserves the right to publish on its public Web site non-confidential business information relating to credit counseling agencies, including contact information, counseling services provided, language support services offered, and fees charged for services.

After completing that thorough review, a United States Trustee may approve a credit counseling agency only if the agency establishes that it fully satisfies all requisite standards. 11 U.S.C. 111(b). Among other things, an applicant must establish it will (a) provide qualified counselors, (b) maintain adequate provision for safekeeping and payment of client funds, (c) provide adequate counseling with respect to client credit problems, and (d) deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides. 11 U.S.C. 111(c)(1).

This rule will implement those statutory requirements. By doing so, the rule will help clients obtain adequate counseling from competent credit counseling agencies, and help safeguard their funds. It also will provide an appropriate mechanism by which entities can apply under section 111 of title 11 to become approved credit counseling agencies, and will enable such applicants to attempt to meet their burden of establishing that they should be approved by United States Trustees under 11 U.S.C. 111.

Summary of Changes in Final Rule

The final rule modifies the proposed rule by making it: (1) Less burdensome on credit counseling agencies; and (2) by providing technical or clarifying modifications. The modifications are summarized according to their classification below. A parenthetical reference to the regulatory text has been added to assist the reader in locating the relevant provisions of the rule. In addition, where applicable, a reference to the comment providing a more detailed explanation of these changes is included:

Modifications To Make the Final Rule Less Burdensome on Credit Counseling Agencies

- The definition of ''material change'' has been revised to eliminate staff other than the management or counselors of an agency (§ 58.12(b)(27)—comment # B9).
- An agency is not required to negotiate an alternative payment schedule with creditors regarding unsecured consumer debt as provided in 11 U.S.C. 502(k). Instead, if an agency does not provide this service, the agency shall disclose that it may refer clients to other approved agencies that do provide this service, and that clients may incur additional fees in connection with such referrals (§ 58.20(l)(9)—comment # B24).
- An agency may disclose to clients and potential clients that, to the extent it is approved as a provider of a personal financial management instructional course pursuant to 11 U.S.C. 111(d), the United States Trustee has reviewed those debtor education services (§ 58.20(l)(11)—comment # B23).
- The reference to ''any applicable law'' in the prohibition that an agency take no action to limit clients from bringing claims against the agency as provided in 11 U.S.C. 111(g)(2) has been deleted (§ 58.20(p)(6)—comment # B27).
- The rule has been revised to add a rebuttable presumption that a client lacks the ability to pay the counseling fee if the client's current household income is less than 150 percent of the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination (§ 58.21(b)(1)—comment # B31).
- The United States Trustee is required to review the basis for the mandatory fee waiver policy one year after the effective date of the rule, and then periodically, but not less frequently than every four years (§ 58.21(b)(2)—comment # B31).
- The requirement that, for an agency to send a credit counseling certificate to a client's attorney, the client must make the request in writing to the agency has been deleted (§ 58.22(a)—comment # B32).
- The rule has been revised to delete the requirement that agencies attach a budget analysis to the credit counseling certificate (§ 58.22(b)—comment # B34).
- The requirement that an agency provide original signatures on certificates, in recognition of electronic filing in the bankruptcy courts and the technology used to generate certificates, has been deleted (§ 58.22(l)(2)—comment # B35).
- The rule has been amended to set forth new procedures for approved agencies that cease to offer debt repayment plan (DRP) services to new clients. This amendment reduces the burden on approved agencies that make the business decision to cease offering DRP services to new clients, but continue to provide services to existing clients by enabling them to decrease their bonding and insurance requirements. In other words, an agency must continue to meet the rule's current bonding and insurance requirements with respect to existing plans only. An approved agency that neither offers DRP services to new clients nor continues to service existing plans, having transferred those plans to other agencies or obtained a waiver from EOUST pursuant to the rule (as set forth in § 58.23(f)), is not subject to the bonding and insurance requirements (§ 58.23(d), (f)—comment # B40).

Technical or Clarifying Modifications

- The definition of ''client'' has been revised to mean an individual who both seeks and receives counseling services from an approved agency, rather than an individual who only seeks but does not receive such services (§ 58.12(b)(11)—comment # B4).
- The definition of ''criminal background check'' has been revised to require an agency to obtain background checks for a counselor in each state where the counselor has resided or worked during the preceding five years (§ 58.12(b)(14)—comment # B25).
- The definition of ''limited English proficiency'' has been revised to be consistent with that used by the Civil Rights Division of the Department of Justice (§ 58.12(b)(26)—comment # B8).
- The definition of ''material change'' has been amended to include a change in language services provided by the agency. Agencies are already required to inform the United States Trustee of the

languages they provide when applying for approval. This clarification emphasizes the importance of notifying the United States Trustee whenever an agency adds or removes a language from its available services (§ 58.12(b)(27)).

• A new definition, ''potential client,'' has been added to describe an individual who seeks, but does not receive, counseling services from an approved agency (§ 58.12(b)(31)—comment # B12).

• The rule has been amended to clarify that when disclosing its fee policy, an agency must disclose its policy, if any, concerning fees associated with generating a credit counseling certificate prior to rendering any counseling services (§ 58.20(l)(1)—comment # B22).

• The rule has been amended to clarify that the requirement that an agency disclose its policy on fees prior to offering services includes Internet based credit counseling. In other words, an agency that publishes information on the Internet concerning its fees must include its policy enabling clients to obtain counseling for free or at reduced rates based upon the client's lack of ability to pay. This is not an additional burden on agencies as the proposed rule requires agencies to disclose their fee polices prior to providing services; the final rule makes it clear that this requirement includes Internet based credit counseling (§ 58.20(l)(2)).

• The rule has been amended to clarify that an agency's duty to disclose its fee policy before providing counseling services includes disclosing the agency's policy to provide free bilingual instruction to any limited English proficient client. This is not an additional burden on agencies as the proposed rule requires agencies to disclose their fee polices prior to providing services; the final rule makes it clear that this requirement includes disclosing agencies' fee policies regarding services for limited English proficient individuals (§ 58.20(l)(3)).

• The rule has been amended to clarify that an agency's duty to maintain records regarding limited English proficiency individuals includes maintaining records regarding the methods of delivery of counseling services, the types of languages and methods of delivery requested by clients and potential clients, the number of clients served, and the number of referrals made to other agencies. Because the proposed rule already requires agencies to maintain records regarding the delivery of services to limited English proficiency individuals, this is not an additional burden in the final rule. Rather, the final rule makes clearer what is expected of agencies in terms of record-keeping for limited English proficient individuals (§ 58.20(o)(5)).

• The rule has been amended to clarify that Internet and automated telephone counseling are not complete until the client has engaged in interaction with a counselor following the automated portion of the counseling (§ 58.22(a)—comment # B33).

• The rule has been amended to clarify that certificates must bear not only the date, but also the time and the time zone when counseling services were completed by the client (§ 58.22(n)(3)—comment # B36).

• The rule has been amended to correct non-substantive stylistic, numbering and typographical errors.

Discussion of Public Comments

EOUST received forty seven comments on the proposed rule. Many of the comments contained several sub-comments. EOUST appreciates the comments and has considered each comment carefully. EOUST's responses to the comments are discussed below, either in the ''General Comments'' section or in the ''Section-by-Section Analysis.''

A. General Comments

1. Cost of the Rule to Credit Counseling Agencies

Comment: EOUST received several comments that the rule will make it more expensive for credit counseling agencies to operate and that they will pass the costs on to clients.

Response: EOUST recognizes that the rule may cause agencies to incur additional costs, but those costs are minimal. Additionally, the extra costs for such measures as procedures to verify a debtor's identity, the requirement that agencies provide additional counseling after completion or termination of a debt repayment plan at no additional cost to the debtor, and mandatory disclosure of the agency's fee policy, are sufficiently important to protect consumers to warrant the extra costs to the agency.

2. Mandatory Nature of Credit Counseling

Comment: EOUST received one comment that credit counseling should not be mandatory.

Response: Pursuant to the BAPCPA, Congress specifically requires individual debtors to complete credit counseling before filing bankruptcy. This requirement is codified at 11 U.S.C. 109(h). EOUST does not have the authority to waive this statutory requirement.

3. Micro-Management of Agency's Day-to-Day Operations

Comment: One comment stated that the power to ensure a credit counseling agency's compliance with the statute and regulations should not become a micro-management of the agency's day-to-day operations.

Response: EOUST concludes that the rule obtains the appropriate balance between ensuring compliance with the law and preserving a credit counseling agency's operational autonomy.

4. Preemption

Comment: One comment noted that the rule omits language stating that nothing in the rule preempts state law, and requested that such preemption language be restored.

Response: The omission of the preemption language does not constitute an expression, from the standpoint of EOUST, that the rule preempts state law to the extent of any conflict between the rule and state law. No inference should be drawn from the omission.

B. Comments on Specific Subsections of the Proposed Rule

1. Use of the Terms Accreditation and Certification [§ 58.12(b)(1), (b)(2) and (b)(13)]

Comment: EOUST received two comments that the rule erroneously uses the terms accreditation and certification interchangeably, when accreditation refers to organizations and certification refers to individuals.

Response: EOUST has reviewed the rule carefully and found no instances where accreditation was used to refer to individuals and certification was used to refer to organizations. In a few instances, an agency representative must sign a certification attesting to a particular fact or facts; these instances, however, do not use the term erroneously.

2. Definition of Adequate Counseling—Repayment Plans [§ 58.12(b)(3)]

Comment: One comment stated that the definition for adequate counseling should be revised to ensure counseling includes offering repayment plans when clients qualify.

Response: This change is unnecessary. The definition of ''adequate counseling'' includes counseling services, which explicitly provide consumers the opportunity to participate in repayment plans.

3. Adequate Counseling—Alternatives to Bankruptcy [§ 58.12(b)(3)]

Comment: One comment recommended adequate counseling be

revised to require counselors to detail the nature of alternatives to bankruptcy if they exist.

Response: This change is unnecessary. The definition of ''adequate counseling'' includes counseling services, which requires counselors to explain, among other things, all reasonable alternatives to resolve a client's credit problems. Alternatives to bankruptcy should be discussed with clients as a matter of course.

4. Definition of Client [§ 58.12(b)(11)]

Comment: One comment stated that the definition of ''client'' is too broad, and should not include a person who merely inquires about services.

Response: EOUST concurs and has adopted this technical modification by revising the definition of ''client'' to include only individuals who both seek and receive services from an approved credit counseling agency. The term ''client'' does not include ''potential clients,'' who are defined separately as those who seek, but do not receive, counseling services from an approved agency. An individual may be both a client of the agency from which he or she seeks and ultimately receives counseling services, and a potential client of other agencies from whom he or she seeks, but ultimately does not receive, counseling services.

5. Definition of Counseling Services—Generally [§ 58.12(b)(12)]

Comment: Several comments objected to the proposed rule's definition of ''counseling services'' to the extent it individualizes the services, asserting that these requirements exceed the scope of the prepetition briefing requirements in 11 U.S.C. 109(h). The comments argued that 11 U.S.C. 109(h) mandates only a group briefing outlining opportunities for available credit counseling and does not require individuals to obtain counseling per se. They urged that EOUST narrow the definition of ''counseling services'' to parallel the statutory requirements imposed by 11 U.S.C. 109(h).

Response: Upon review of 11 U.S.C. 109(h) and 111(c), the purposes underlying the BAPCPA, and the relevant case law, EOUST has determined that the ''briefing'' described in 11 U.S.C. 109(h) and the credit counseling described in the proposed rule are synonymous. Accordingly, EOUST declines to amend the proposed rule to limit the definition of ''counseling services'' to exclude credit counseling sessions. Furthermore, EOUST has determined that, for 11 U.S.C. 109(h) to be consistent with 11 U.S.C. 111(c), counseling services must address the individual client's financial circumstances. Section 111(c)(2)(E) requires ''adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such a client can develop a plan to respond to the problems without incurring negative amortization of debt.'' 11 U.S.C. 111(c)(2)(E). Accordingly, the proposed rule's requirement that ''counseling services'' include a written analysis of each client's current financial condition is consistent with the statutory mandate. EOUST does not require that such analysis take any particular written form; for example, the agency may convey the written analysis via electronic mail.

To the extent 11 U.S.C. 109(h) authorizes ''group'' briefings, EOUST interprets the statute to permit couples to attend credit counseling sessions jointly. This interpretation is consistent with 11 U.S.C. 111(c) and accommodates spouses who intend to file joint petitions. Furthermore, EOUST permits group credit counseling sessions by telephone, provided that each individual client also receives adequate individualized counseling with respect to his or her credit problems, including an analysis of such client's current financial condition, the factors that caused such financial condition, and how such a client can develop a plan to respond to the problems without incurring negative amortization of debt, consistent with the requirements of 11 U.S.C. 111(c)(2)(E).

6. Definition of Counseling Services—Length of Time [§ 58.12(b)(12)]

Comment: EOUST received several comments that a minimum length requirement of 60 minutes for a credit counseling session is too long, that such a minimum length requirement will increase costs, and that EOUST lacks the authority to specify a minimum length of time for a counseling session.

Response: The rule does not require all counseling sessions to last 60 minutes. Section 58.12(b)(12) states the counseling services ''are typically of at least 60 minutes in duration.'' This requirement means that most counseling sessions should last approximately 60 minutes, but that, in some instances, less or more time may be appropriate.

7. Definition of Counseling Services—Written Analysis [§ 58.12(b)(12)]

Comment: EOUST received one comment that a written analysis should not be required and that electronic or verbal analysis should be sufficient.

Response: Written analysis is necessary to protect consumers and to verify that the agency provided a substantive analysis of the consumer's financial situation. The agency may provide the client this analysis via email, but it must be written.

8. Definition of Limited English Proficiency [§ 58.12(b)(26)]

Comment: EOUST received one comment seeking revision of this definition to clarify its meaning.

Response: EOUST concurs that a technical modification is necessary and has revised the definition of the term to match that used by the Civil Rights Division of the Department of Justice, as set forth in Notice, Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41,455 (June 18, 2002). Though the wording is slightly different, the meaning of limited English proficiency is essentially the same, i.e. individuals who do not speak English as their primary language or who have difficulty understanding English.

9. Definition of Material Change [§ 58.12(b)(27)]

Comment: One comment stated that staff changes should be deleted from the definition of material change since the requirement is unnecessarily burdensome.

Response: EOUST agrees that this requirement may be overly burdensome. Not every change in staff requires EOUST notification. The purpose of this requirement is to ensure that EOUST remains aware of changes in key personnel. Because the definition of ''material change'' already specifies notification for changes in management, the rule has been modified to change ''staff'' to ''counselors'' and thereby reduce the burden on credit counseling agencies.

10. Definition of Median Family Income

Comment: One comment noted that the rule defines the term ''median family income,'' but then does not use it in the rule.

Response: EOUST has deleted the definition of median family income from the rule.

11. Definition of Nonprofit [§ 58.12(b)(29)]

Comment: EOUST received one comment suggesting that the definition of ''nonprofit'' require that the credit counseling agency has been approved

by the IRS for tax purposes under section 501(c)(3) of the Internal Revenue Code.

Response: 11 U.S.C. 111 requires a credit counseling agency to be organized as a nonprofit entity, but does not require tax exempt status. Organization as a nonprofit entity is a matter of state law, and nonprofit organizations do not necessarily qualify for 501(c)(3) tax-exempt status, which is a matter of federal law. When determining whether an agency constitutes a nonprofit entity, EOUST takes into consideration whether an agency has been approved or rejected for 501(c)(3) status, and requires an agency to notify EOUST if 501(c)(3) status is revoked, but tax-exempt status is not required under the statute to operate as a nonprofit entity.

12. Definition of Potential Client [§ 58.12(b)(31)]

Comment: One comment stated that the rule refers to the term ''potential client'' numerous times, but does not define the term.

Response: EOUST concurs that a technical modification is necessary and has added a definition of ''potential client'' in the final rule. A ''potential client'' is an individual who seeks, but does not receive, counseling services from an approved agency. An individual may be both a client of the agency from which he or she seeks and ultimately receives counseling services, and a potential client of other agencies from whom he or she seeks, but ultimately does not receive, counseling services.

13. Definition of Referral Fees [§ 58.12(b)(33)]

Comment: One comment stated that the definition of referral fees contains a loophole that would allow an entity to charge a referral fee merely by calling it something else.

Response: EOUST has deleted the definition of ''locator,'' eliminating any concerns that a loophole exists in the definition of referral fees. The revised definition of ''referral fees'' prohibits the transfer or passage of any money or other consideration between an agency and another entity as consideration or in exchange for the referral of clients for counseling services. The sole exception is for fees paid under a fair share agreement, as defined elsewhere in the rule.

14. Disclosure of Revocation of 501(c)(3) Status [§§ 58.17(c), 58.24(c)(3) and (d)]

Comment: EOUST received several comments that an agency should not have to disclose to EOUST when the IRS revokes its tax-exempt status because the statute does not require tax-exempt status. Accordingly, revocation does not bear on the credit counseling agency's qualifications as an approved credit counseling agency.

Response: The review process to ensure the approval of only qualified nonprofit credit counseling agencies requires consideration of changes in an agency's 501(c)(3) status. While it is true that tax-exempt status is not required for approval, any revocation of that status is relevant in determining an agency's initial or ongoing qualifications and fitness for approval. In particular, if the IRS revoked an agency's nonprofit status due to a determination that the agency is operating for profit, such a determination may disqualify the agency. Accordingly, revocation of an agency's 501(c)(3) tax-exempt status, though not dispositive, may bear on the agency's qualification and fitness for approval by the United States Trustee.

15. Prohibition on Legal Advice [§§ 58.12(b)(25), 58.20(b)]

Comment: Several comments expressed concern about the rule's reference to 11 U.S.C. 110(e)(2) when defining legal advice. Some of the comments stated that 11 U.S.C. 110(e)(2)'s definition of legal advice is overly broad when applied to credit counselors because it includes bankruptcy procedures and rights. Because counselors are expected to explain the basic principles of bankruptcy to clients in the course of providing counseling services, the comments expressed concern that the very act of counseling could cause counselors to give ''legal advice'' in violation of the rule's prohibition. Another comment supported an absolute ban on the provision of legal advice by counselors.

Response: Because of the differences among the states concerning the definition of the unauthorized practice of law, and the resulting difficulty in defining ''legal advice,'' EOUST concluded the most appropriate approach is to adopt the definition Congress provided in 11 U.S.C. 110(e)(2). EOUST is sensitive to the concern that a counselor's explanation of bankruptcy principles to clients may be considered ''legal advice,'' but interprets 11 U.S.C. 110(e)(2) to mean that counselors shall not advise clients concerning the application of bankruptcy laws, principles, or procedures to a particular individual's circumstances, may not recommend that a particular individual should proceed in bankruptcy, and may not describe how bankruptcy laws, principles, or procedures would affect a particular individual's case in the event of a bankruptcy filing. Rather, the counselor may explain basic bankruptcy principles and how such procedures are applied generally.

16. Board Directors [§ 58.20(c) and (d)]

Comment: EOUST received one comment that board directors should not be classified as debt relief agencies. EOUST also received one comment that attorneys who practice bankruptcy law or whose firms practice bankruptcy law should not be allowed to serve as directors or officers of a credit counseling agency.

Response: Board directors, as such, are not classified as debt relief agencies unless they meet the definition of debt relief agencies in 11 U.S.C. 101(12A). Furthermore, so long as attorneys meet the requirements of 11 U.S.C. § 111 and this rule, which require directors, officers and board members to be independent and not to receive any remuneration based on the credit counseling services performed by the agency, EOUST declines to adopt a blanket rule prohibiting attorneys who practice bankruptcy from serving in positions of authority in a credit counseling agency.

17. Counselor Qualifications [§ 58.20(f)]

Comment: One comment supported the rule's requirements concerning counselor qualifications and another comment expressed the opinion that the requirements need to be strengthened. Yet another comment stated the rule failed to allow for a training period for inexperienced counselors.

Response: The counselor qualification requirements are meant to ensure that counselors possess sufficient expertise in financial matters to provide substantive counseling to consumers. Accordingly, inexperienced counselors either must complete a financial course of study or must work a minimum of six months in a related area to ensure they are qualified to act as counselors. Based upon experience administering the Interim Final Rule and its interactions with agencies, EOUST concluded the requirements enunciated in this rule are sufficient to ensure that counselors will be qualified to counsel consumers.

18. Verification of Identity [§ 58.20(h)]

Comment: EOUST received two comments concerning identity verification. One expressed the opinion that verification of client identity in the context of Internet and telephone counseling is impossible, and another questioned why no comparable verification is required for in-person counseling.

Response: Establishing an individual's identity in the context of telephone and Internet counseling may pose difficulties. This does not, however, obviate identity verification requirements. Indeed, many agencies already have implemented effective identity verification procedures. For in-person counseling, an individual may present his or her driver's license, or similar photo identification, to establish his or her identity. Because the counselor is physically present and can confirm that the photo in the driver's license matches the client, this identification procedure is sufficient for in-person counseling. In the case of Internet and telephone counseling the individual is not in the counselor's physical presence and additional measures are necessary to confirm the individual's identity.

19. Toll-Free Telephone Numbers [§ 58.20(i)]

Comment: One comment stated that credit counseling agencies should not be required to provide toll-free telephone numbers to all callers.

Response: Telephone counseling commonly lasts 60 to 90 minutes. For individuals experiencing financial difficulties, the cost of such a phone call may constitute an undue burden. This cost should be borne by the credit counseling agency, which can spread the cost among many different clients.

20. Special Needs [§ 58.20(k)]

Comment: One comment stated that ''special needs'' should be a defined term.

Response: The term ''special needs'' is in the public vernacular and commonly refers to people with disabilities. No further clarification is necessary.

21. Disclosures—Debt Repayment Plans (DRPs) [§ 58.20(*l*)]

Comment: EOUST received one comment that credit counseling agencies should disclose the percentage of all clients participating in DRPs, and the percentage of clients who complete DRPs.

Response: Credit counseling agencies currently are required to report to EOUST the number of clients enrolled in a DRP and the number of clients who completed a DRP in Appendix E to the credit counseling application. This appendix must be submitted to EOUST twice a year.

22. Disclosures—Additional Fees [§ 58.20(*l*)(1)]

Comment: EOUST received one comment requesting clarification of the requirement that, when an agency charges a separate fee for the certificate in addition to counseling, the client must consent in writing. The comment sought clarification in the case of telephone and Internet counseling, and suggested that clients be able to consent verbally or electronically in such cases.

Response: EOUST concludes that the rule should not have specific instructions for circumstances that arise infrequently as most agencies do not charge a separate fee for the issuance of the certificate. Accordingly, the rule has been amended to strike the specific and additional instructions for credit counseling agencies that charge separate fees for certificates (§ 58.22(g) of the proposed rule). Instead, the final rule requires the general disclosures to include disclosure of *all* fees, including any additional fees for certificates. This is not an additional burden on agencies as the proposed rule, and Interim Final Rule, already require agencies to disclose their fee policy before rendering services.

23. Mandatory Disclosures [§ 58.20(*l*)]

Comment: EOUST received two comments concerning the number of mandatory disclosures. One comment stated that the number of mandatory disclosures is excessive and should be reduced to avoid confusing clients; the comment suggested deleting paragraphs 58.20(*l*)(4), (5), and (7) as unnecessary, and allowing mandatory disclosures made pursuant to paragraphs (6), (8), and (12) to be given during the counseling session rather than before. Another comment, however, recommended adding complaint procedures.

EOUST also received a comment recommending that, to the extent a credit counseling agency is also approved as a provider of a personal financial management instructional course pursuant to 11 U.S.C. 111(d), the agency be able to state that the United States Trustee has reviewed those services.

Response: While there are a number of disclosures, they are necessary to protect consumers. Section 111(c)(2)(D) requires the inclusion of paragraphs (4), (5) and (6). 11 U.S.C. 111(c)(2)(D). Paragraph (7) alerts consumers that agencies do not accept or give referral fees to increase consumer confidence in the integrity of the credit counseling industry. Paragraphs (8) and (12) inform consumers that the agency must provide a certificate promptly, and that a certificate will be provided only if the individual completes the credit counseling. This disclosure is particularly important to eliminate misunderstandings between the agency and client, and to make clear to clients that they must complete credit counseling before receiving a credit counseling certificate.

Though the proposed rule did not prohibit agencies from informing consumers that they were also, where applicable, approved debtor education providers, the rule did not expressly allow it. To reduce a restriction on agencies, paragraph (*l*)(11) has been revised to permit a credit counseling agency to disclose that, to the extent that an agency is also approved as a provider of a personal financial management instructional course pursuant to 11 U.S.C. 111(d), the United States Trustee has reviewed those debtor education services.

Credit counseling agencies already are obligated to develop complaint procedures. Requiring disclosure of such procedures before providing services is not necessary, especially since additional disclosures could dilute the effectiveness of those already required.

24. Section 502(k) [§ 58.20(*l*)(9)]

Comment: Several comments objected to the requirement that agencies provide each client the opportunity to have the agency negotiate an alternative payment schedule as contemplated in 11 U.S.C. 502(k). The comments stated that this is often unnecessary, will increase costs, and will possibly subject the agencies to additional state regulation.

Response: EOUST concurs and has modified the rule to reduce the burden on agencies. Sections 109, 111, and 502(k) do not confer upon debtors the absolute right to negotiate alternative repayment schedules with creditors, nor do they require agencies to negotiate alternative payment schedules on behalf of clients. Agencies who, in their business discretion, decide not to provide this service and wish to refer clients to another agency for negotiation of alternative payment schedules must refer clients to other approved agencies that provide the service. Accordingly, the rule has been revised to eliminate the requirement that agencies offer this service and instead requires agencies to disclose whether or not they provide this service and any additional fees clients may incur upon referral to another approved agency.

25. Background Checks [§ 58.20(n)]

Comment: EOUST received several comments concerning background checks. One comment stated that agencies should be able to choose between state and federal criminal background checks for counselors due to cost. Another comment stated the FBI

background check should encompass the counselor's entire criminal history, and, where only the state background check is available, the background check should encompass all states where the counselor lived during the preceding two years, rather than the past five years. Two comments recommended that EOUST require criminal background checks of all employees.

Response: EOUST recognizes that agencies incur costs associated with conducting background checks. The cost of complying with the background check requirement, however, is warranted because counselors are privy to clients' private financial information, and, in some cases, handle client funds. A five-year state history, encompassing all states where the counselor has resided or worked, as opposed to a two-year history, is necessary to ensure that the counselor has not committed any crimes involving fraud, dishonesty, or false statements within the recent past. Investigation of the preceding two years is insufficient to ensure an individual qualifies as a counselor. The final rule clarifies the proposed rule's five-year background check requirement to mean agencies should conduct a state background check for each state in which a counselor has either lived or worked during the preceding five years.

However, EOUST declines to require criminal background checks of all employees. Such a requirement would place an undue burden on agencies and is unwarranted for employees, such as clerical and janitorial staff, who have no substantive contact with consumers or client funds. Furthermore, the final rule's background check is designed to strike an appropriate balance ensuring consumers are protected without imposing too high a burden on individuals attempting to reintegrate into society. *See* Letter from Eric H. Holder, Jr., Att'y Gen., Dep't of Justice, to State Attorneys General (Apr. 18, 2011) (concerning collateral consequences of criminal convictions) (on file with the Department of Justice, Civil Rights Division). Maintaining this balance, section 58.20(n)(2) of this rule generally prohibits credit counseling agencies from employing as a counselor a person who has been convicted of a felony or crime of dishonesty, but allows for waiver of this prohibition by the United States Trustee if circumstances warrant a waiver. Written requests for waivers of this prohibition should be directed to the EOUST.

26. Recordkeeping Requirements [§ 58.20(o)]

Comment: EOUST received several comments concerning recordkeeping requirements. A number of comments sought to limit the recordkeeping requirements to actual clients only, as opposed to actual and potential clients; in addition, one comment sought to reduce the retention period for hard copies of signed certificates from the two years set forth in the rule to 180 days.

Response: Certain recordkeeping requirements, such as the requirement to maintain records concerning the numbers of potential clients who seek counseling in languages other than English, are necessary to advance the underlying purpose of the statute and to assist the EOUST in ensuring that counseling services are available to the broadest range of consumers. Accordingly, the final rule retains most recordkeeping requirements regarding ''potential clients,'' but eliminates the recordkeeping requirements as to ''potential clients'' in two instances—namely, concerning ethical obligations of directors, officers, trustees, and supervisors concerning the financial decisions potential clients make after requesting counseling services, and the prohibition of bundling or tying agreements as to potential clients. In those instances, the reference to ''potential clients'' does not advance a legitimate regulatory objective.

The requirement that agencies retain hard copies of signed certificates for two years has been deleted. The final rule no longer requires agencies to provide original signatures on certificates in recognition of electronic filing in the bankruptcy courts and the technology used to generate certificates. Copies of such certificates shall be retained for 180 days from the date of issuance.

27. Additional Minimum Requirements [§ 58.20(p)6)]

Comment: One comment objected to the rule's requirement that agencies take no action to limit clients from bringing claims against agencies ''under any applicable law, including but not limited to 11 U.S.C. § 111(g)(2).'' The comment expressed the opinion that the phrase ''any applicable law'' exceeds the scope of section 111(g)(2).

Response: To reduce the burden on credit counseling agencies, the rule has been amended to strike the reference to ''any applicable law.''

28. Advertising [§ 58.20(p)(8)]

Comment: EOUST received one comment suggesting that the phrase ''approval does not endorse or assure the quality of an Agency's services'' should be deleted. The comment claimed advertising is protected speech and the quoted phrase raises doubts in the mind of the consumer concerning the meaning of approval.

Response: This disclaimer is necessary to inform consumers that, although the agency is approved to issue credit counseling certificates, such approval does not constitute a government guarantee or endorsement of the quality of the agency's services. This disclaimer protects consumers who otherwise might infer that approval means all agency actions automatically carry the approval or endorsement of the federal government. In addition, after obtaining approval, a credit counseling agency may change its business practices or employ unqualified counselors and EOUST may not learn of these changes in quality immediately. Finally, advertising constitutes commercial speech and is subject to regulations that directly advance a substantial governmental interest, provided there exists a reasonable fit between the regulations and the governmental interest. As EOUST has a substantial interest in ensuring that the public is not misled regarding the meaning of agency approval, and as the disclaimer is narrowly tailored to advance EOUST's interest without otherwise controlling or otherwise limiting the content of a credit counseling agency's advertisements, the disclaimer is reasonable.

29. Exposure to Commercial Advertising and Sale of Personal Information [§ 58.20(p)(10)]

Comment: One comment stated the protections in § 58.20(p)(10) are insufficient, and that agencies should not be permitted to market any services or sell any information to consumers.

Response: No change is necessary. As written, the rule prohibits agencies from marketing any product during the counseling services. In addition, the rule strictly forbids agencies from selling a consumer's information without the consumer's prior written consent. Strengthening this prohibition by prohibiting agencies from selling a consumer's information, even when the consumer consents, would infringe on the rights of consumers to make informed decisions and to consent voluntarily to commercial agreements.

30. Fees [§ 58.21(a)]

Comment: EOUST received numerous comments regarding the determination of reasonable fees. Comments spanned

suggestions for the dollar amount of a reasonable fee, ranging from $60 to $100; to suggestions that a fee, to be reasonable, should be charged per counseling session regardless of whether one debtor or a married couple attends the session; to suggestions that the proposed $50 reasonable fee is unreasonable and should be adjusted for regional variations; to suggestions that the EOUST should review the amount of the reasonable fee annually, rather than every four years. A number of comments stated that the establishment of a fixed reasonable fee runs afoul of the market economy, and that competition will keep fees low while taking regional variations and cost changes into account. One comment expressed the concern that the proposed reasonable fee and fee waiver requirements would render it unable to cover the costs of providing counseling services. Another comment criticized the determination that fees in excess of $50 per client were unreasonable, stating that, if EOUST places limits on reasonable counseling fees, EOUST should limit all other fees incurred in a bankruptcy case, including, without limitation, attorney's fees, filing fees, and court fees.

Response: EOUST has considered carefully the comments concerning both the amount of a reasonable fee and the policies underlying the establishment of a fixed fee, both in the context of the policies underlying the statute and taking into account the experiences of approved agencies since passage of the Interim Final Rule, and has determined: (a) Fees in excess of $50 per person are not presumptively reasonable; (b) EOUST shall review the amount of the presumptively reasonable fee one year after the effective date of the rule, and then periodically, but not less frequently than every four years; (c) agencies may request permission to charge a larger fee, which EOUST will consider on a case-by-case basis; and (d) whether a credit counseling agency charges fees for a counseling session per individual or per couple is within the business discretion of the agency.

EOUST acknowledges that local variations in income, cost of living, overhead, inflation, and other factors may influence and lead to inter-agency differences in determining the reasonableness of counseling fees. However, based on EOUST's experience with approved agencies, the $50 presumptively reasonable fee adequately incorporates the costs associated with complying with the statute and rule, taking into account the requirement that agencies operate as nonprofit entities, and taking into account the increasing prevalence of telephone and Internet counseling, both of which are associated with lower costs than in-person counseling. The rule permits agencies to exceed the presumptively reasonable fee after receiving approval from EOUST by demonstrating, at a minimum, that its costs for delivering the counseling services justify the requested fee. The agency bears the burden of establishing that its proposed fee is reasonable. Such requests may occur at the time of the agency's annual re-application for approval to provide counseling services, or at any other time the agency deems necessary. Agencies that have previously submitted requests to charge more than $50, and have been granted permission to do so, will not be required to resubmit such requests if the agency continues to charge that fee in the same amount. Of course, any new requests must be submitted to EOUST for approval. EOUST does not have authority to approve fees for attorneys or other professionals in the same manner as credit counseling agencies, and lacks authority to limit such professional fees and court costs.

31. Fee Waivers [§ 58.21(b)]

Comment: EOUST received numerous comments concerning the requirement that agencies offer counseling services at a reduced cost, or waive the fee entirely, for clients who are financially unable to pay. The proposed rule requires agencies to waive or reduce fees for clients whose income is less than 150 percent of the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination (the ''poverty level'').

While one comment expressed concern that the association between the poverty level and the determination of a client's ability to pay necessitated further study and assessment of financial impact on the agencies, another comment objected to the use of 150 percent of the poverty level as a mandatory fee waiver requirement, arguing that the 150 percent standard was unsustainable and would lead to severe agency financial losses. One comment cautioned that a nationwide objective standard would unduly impact agencies in areas with higher concentrations of low income clients. Another comment suggested permitting or implementing a schedule of discounts for clients whose incomes fall below the poverty guidelines, but who can afford to pay some amount, while yet another comment suggested not only that a client should bear the burden of demonstrating inability to pay, but that a client should affirmatively request the fee waiver. One comment criticized mandatory fee waivers as an ''unfunded mandate.''

Response: Based on these comments and EOUST's existing fee waiver data, EOUST has revised the rule to reduce the burden on agencies while still maintaining adequate protection for consumers. EOUST acknowledges that standardization may not take into account local differences, and may have a disparate impact on agencies located in geographic areas of concentrated low income. Although a credit counseling agency may apply to EOUST to increase its counseling fee, such fee increases ultimately shift the fee burden to those clients more able to pay.

Furthermore, a mandatory fee waiver for clients with income at or below 150 percent of the poverty level likely would result in a substantial increase in the number of fee waivers granted. Although some commentators urged EOUST to adopt rigid criteria requiring agencies to offer services without charge, such an inflexible rule would be inconsistent with similar court practices concerning waiver of court filing fees for *in forma pauperis* debtors that do not require the wholesale waiver of filing fees for all debtors with incomes below a certain income level. Under BAPCPA, debtors earning less than 150 percent of the poverty level are eligible to apply for a waiver of the court filing fee and the court determines whether an eligible debtor has the ability to pay the filing fee. Not all debtors who are eligible for a waiver of the filing fee apply, and not all debtors who apply are eligible. Fewer than two percent of debtors ultimately obtain a waiver of court filing fees. In comparison, based on available data from 2005, approximately 30 percent of chapter 7 debtors are eligible to apply for a waiver of the court filing fee. If EOUST were to require agencies to adopt a mandatory fee waiver policy with respect to all such debtors, some agencies could suffer severe financial losses that would render them unable to provide services, reducing capacity to serve the overall debtor population. As of July 2009, according to self-reporting by approved credit counseling agencies, without the proposed mandatory fee waiver, 10.8 percent of certificates were issued at no cost, with another 22.1 percent issued at reduced cost.

In response to these concerns, EOUST has adopted a rebuttable presumption of a mandatory fee waiver or fee reduction policy for clients whose income is less than the poverty level, based on the *in*

forma pauperis standard set forth in 28 U.S.C. 1930(f)(1). Under this rebuttable presumption policy, instead of waiving the fee entirely, an agency may charge a client a reduced fee if the agency determines that the client does, in fact, have the ability to pay some of the fee; the amount may be determined using a sliding scale, of the agency's design, that takes into account the client's financial circumstances. If the agency determines that the client has the ability to pay some of the fee, there is no minimum amount by which the agency should reduce the fee; the amount of fee reduction is entirely dependent upon the client's ability to pay as determined by the client's financial circumstances. This rebuttable presumption satisfies the statutory mandate that counseling services be provided without regard to a client's ability to pay the fee while taking into account the agency's need to generate sufficient income from fees to cover operational costs. Accordingly, this policy establishes a uniform, objective standard by which agencies, clients, and EOUST can evaluate client entitlement to a fee waiver or a fee reduction depending on each particular client's ability to pay.

Furthermore, because agencies obtain personal financial information from clients in the context of performing the analysis of the client's financial condition required by 11 U.S.C. 111(c)(2)(E), a fee waiver or fee reduction policy based on a comparison of the client's household income against the poverty level can be performed with ease. Having just reviewed the client's financial information, a credit counseling agency is in the best position to make a determination whether the client is eligible for a fee waiver or fee reduction. The agency makes the determination of whether to grant the fee waiver or fee reduction when the agency is counseling the client; the agency need not consult with EOUST before making its determination. EOUST will review an agency's fee waiver policies and statistics during the agency's annual review or during a quality of service review. Finally, because the poverty level is updated periodically and takes into account the client's household size, this policy accounts for nationwide changes in the cost of living over time.

Establishing a presumptively mandatory but rebuttable fee waiver or fee reduction policy for clients whose household income falls at or below 150 percent of the poverty level recognizes agencies' need to generate sufficient income from fees to cover operational costs in light of the statutory mandate. To the extent a credit counseling agency believes the fee waiver policy set forth in the rule adversely impacts its financial viability, the agency may apply to EOUST to increase its fee. The agency shall demonstrate that its costs of delivering counseling services (including opportunity costs associated with waived or foregone fees) justify the proposed fee. The rates of both full and partial fee waivers based on client income levels, and the mechanisms by which agencies implement the rebuttable presumption, are subject to EOUST scrutiny during the annual application review for each approved agency and during quality of service reviews to assess compliance with 11 U.S.C. 111 and this final rule.

To permit EOUST to periodically evaluate the cost and business impact of this mandatory fee waiver policy on clients and agencies, and determine whether agencies are applying the mandatory fee waiver policy uniformly and fairly, the rule has been amended to add a new section, § 58.21(b)(2), requiring the United States Trustee to review the basis for the mandatory fee waiver policy one year after the effective date of the rule, and then periodically, but not less frequently than every four years. When reviewing the basis for the mandatory fee waiver or fee reduction policy, EOUST may consider the impact on both agencies and clients by evaluating data from agencies concerning the counseling fees, increases to such fees, and rates of total and partial fee waiver. By retaining the mandatory, objective fee waiver policy but requiring its periodic review, EOUST advances the statutory mandate that counseling services be provided without regard to the client's ability to pay, while enabling EOUST to revisit the objective standard in light of agency operational costs and impact on clients. The reasonableness of agency determinations will continue to be subject to EOUST oversight during the application process, during on-site reviews, and in the course of resolving specific complaints.

32. Delivery of Certificates—to Whom [§ 58.22(a)]

Comment: EOUST received several comments concerning delivery of certificates to a client's attorney. The proposed rule required a client to authorize, in writing, the delivery of the credit counseling certificate to the client's attorney. The comments expressed the opinion that requiring a client to provide written consent to a credit counseling agency is inefficient, particularly when the client receives counseling by telephone or Internet. In such instances, the comments provide that mail transmission of written consent to a credit counseling agency delays the delivery of the certificate. Rather than requiring written consent, the rule should permit the client to verbally authorize the agency to send the certificate to the client's attorney.

Response: EOUST agrees that written consent to deliver a certificate to a client's attorney is unnecessary and unduly impedes the efficiency of telephone and Internet counseling. Accordingly, the rule has been revised to permit verbal authorization to send a certificate to a client's attorney. In the case of Internet counseling, electronic mail authorization or an electronic affirmation (such as a radio button or a box on a web page) is sufficient.

33. Delivery of Certificates—Time [§ 58.22(a) and (c)]

Comment: Several comments objected to the requirement that a credit counseling agency deliver the certificate to a client within one business day of completion of counseling; three comments suggested that agencies should have three business days to deliver the certificate. Several comments expressed uncertainty about the meaning of the word ''deliver.'' Some comments suggested that three business days were necessary to complete delivery by mail, while others suggested that electronic mail is an appropriate delivery method.

One comment also sought clarification about when Internet counseling is ''complete'' and suggested that completion should be defined specifically. The comment noted that, in the case of Internet counseling, agencies and clients are uncertain whether counseling is considered complete when the client finishes the online course or whether further interaction with a counselor is necessary.

Response: The requirement that a credit counseling agency send the certificate to a client within one business day accords the agency adequate time and is commercially reasonable. The term ''deliver'' has been changed to ''send'' to encompass a wide range of transmission methods. To the extent a credit counseling agency is unable to send the certificate within the specified time because of extenuating circumstances, such as problems with generating or printing the certificate, illness of the counselor, or other circumstances beyond the agency's control, EOUST can evaluate such incidents on a case-by-case basis.

The rule also has been revised to clarify that, in the case of Internet counseling and automated telephone counseling, counseling is not complete

until the client has engaged in interaction with a counselor, whether by electronic mail, live chat, or telephone, following the automated portion of the counseling session. Personal interaction has utility as a means of verifying and confirming client identity, and is necessary to meet the statutory objectives set forth in 11 U.S.C. 111(c)(2)(E) that agencies assess each client's current financial condition, the factors that caused such financial condition, and how the client can develop a plan to respond to those problems.

34. Certificates—Budget Analysis [§ 58.22(b)]

Comment: Two comments objected to the requirement that the budget analysis the counselor prepares for the client be attached to the certificate. One comment suggested that, because of the nature of prebankruptcy counseling, data contained in such a budget analysis may be unreliable and, if filed with the bankruptcy court, may prejudice the debtor client. Another comment expressed the opinion that requiring attachment of the budget analysis to the certificate may violate client privacy.

Response: EOUST agrees that 11 U.S.C. 109 and 521 do not require the agency to attach the budget analysis to the credit counseling certificate. Accordingly, the final rule deletes this requirement and reduces the burden on credit counseling agencies.

35. Certificates—Original Signature [§ 58.22(*l*)(2)]

Comment: Several comments objected to the requirement that certificates generated for electronic filing must be generated in paper form as well and must bear the original signature of the counselor. The comments criticized the requirement as expensive and time-consuming, and noted that the rule contains precautions against creation of forged or fraudulent certificates.

Response: EOUST agrees and has reduced the burden on credit counseling agencies by deleting the requirement that, when a certificate is generated for electronic filing with the court, the agency must provide the client a paper certificate bearing the counselor's original signature as well.

36. Certificates—Time of Completion [§ 58.22(n)(3)]

Comment: One comment noted that certificates should contain not only the date but also the time that counseling was completed.

Response: EOUST concurs that a technical modification is necessary and has revised the rule to require certificates to contain both the date and the time that counseling was completed; the time must include the time zone. This technical modification does not impose an additional burden as the proposed rule required certificates to contain the date of completion. Including the time and time zone is a minor modification to the date on the certificate.

37. Certificates—Legal Name [§ 58.22(o)]

Comment: EOUST received several comments concerning the display of two names on the certificate when a third party (such as an attorney-in-fact acting under a valid power of attorney) completes counseling on behalf of the client. The comment expressed doubt that a certificate can display two names rather than one. Several comments expressed the opinion that, rather than leaving open the possibility that a third party can complete counseling on behalf of the client under certain circumstances, the rule expressly should prohibit third parties from taking counseling on behalf of clients.

Response: Certificates may display more than one name (e.g., John Doe, as Attorney-In-Fact for Jane Doe). No clarification is necessary to permit such a display, and the display of both names removes the need for agencies to engage in legal analysis concerning the proper party to list on the certificate, while providing full disclosure to courts and other parties concerning the client's participation in counseling.

Furthermore, EOUST declines to prohibit third parties from completing counseling on behalf of a client under appropriate circumstances, such as under a valid power of attorney sufficient to authorize the individual to file a bankruptcy petition on behalf of a client. To the extent state law authorizes powers of attorney, EOUST does not object to the completion of counseling by duly authorized attorneys-in-fact on behalf of clients.

38. Fees—Additional Counseling [§ 58.22(p)]

Comment: EOUST received a comment that, if a client seeks pre-bankruptcy counseling from an approved agency and enters into a DRP, and then the client decides to file for bankruptcy more than 180 days after the initial counseling session, the agency should be entitled to additional compensation for further counseling services.

Response: EOUST disagrees and no change has been made to the rule. Because the pursuit of alternatives to bankruptcy is one of the principal goals of the BAPCPA, debtors who pursued bankruptcy alternatives in the spirit of the BAPCPA, such as DRPs, should not be penalized for doing so by paying twice for credit counseling. Rather, agencies must provide additional counseling sufficient to enable the client to comply with the statutory requirement at no additional cost to the client.

39. Debt Repayment Plans [§ 58.23(d), (e) and (f)]

Comment: One comment expressed uncertainty why the rule includes financial requirements (including bonding and insurance requirements) for agencies offering DRPs.

Response: Because DRPs are an alternative to bankruptcy and require a credit counseling agency to handle client funds, EOUST seeks to ensure that agencies offering DRPs safeguard client funds and fulfill fiduciary obligations toward clients. Accordingly, the rule contains financial bonding and insurance requirements for any agency offering DRPs to protect client funds and to ensure that disbursements on behalf of clients are made.

40. Surety Bond Percentage [§ 58.23(d) and (f)]

Comment: EOUST received two comments suggesting that the surety bond percentage should be higher for first time applicants.

Response: EOUST declines to adopt this requirement, finding that the current bonding requirements are sufficient for all applicants, including first-time applicants. However, EOUST has determined that DRP client protection may continue to be necessary, under certain circumstances, in the event an approved credit counseling agency ceases to offer DRP services to individuals who received counseling from such agency pursuant to 11 U.S.C. 109(h). Although such agencies need not maintain EOUST approved bonds and insurance if they transfer their existing DRP clients to other approved agencies within a specified period of time, to the extent such agencies continue to service the DRP accounts of these existing clients after ceasing to offer DRP services to new clients, they must continue to maintain sufficient bonding and insurance requirements to protect client funds and to ensure that disbursements on behalf of clients are made for the life of those clients' DRP terms.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of

Regulation. The Department has determined that this rule is a ''significant regulatory action.'' Accordingly, this rule has been reviewed by the Office of Management and Budget (''OMB'').

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the required costs for the submission of an application. Costs considered also include the cost of establishing and maintaining the approved list in each federal judicial district. In an effort to minimize the burden on applicants, the application keeps the number of items on the application to a minimum.

The costs to an applicant of submitting an application will be minimal. The anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications. Based upon the available information, experience with the credit counseling industry, and informal communications with credit counseling agencies, EOUST anticipates that the cost for submitting an application should equal approximately $500 per application for agencies. This cost is not new. It is the same cost that credit counseling agencies incurred when applying under the Interim Final Rule.

Agencies that offer DRPs also must obtain a surety bond in the amount of either (1) two percent of the agency's disbursements made during the twelve months immediately prior to the submission of the application from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee; or (2) equal to the average daily balance maintained for the six months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee. In addition, credit counseling agencies that offer debt repayment plans must obtain employee fidelity insurance in a face amount equal to 50 percent of the surety bond. Credit counseling agencies are entitled to receive a credit for any state surety bond or employee fidelity insurance already obtained.

Although credit counseling agencies may charge a fee for providing the credit counseling services in accordance with this rule, agencies must provide credit counseling without regard to a client's ability to pay the fee. Based upon the available information, current practice of many credit counseling agencies, experience with the credit counseling industry, and communications with credit counseling agencies, EOUST presumes $50 to be a reasonable fee for credit counseling. The United States Government Accountability Office, after conducting a study on credit counseling, found that $50 was the typical rate charged by credit counseling agencies and that industry observers and consumer advocates considered this amount to be reasonable.

The amount presumed to be reasonable for credit counseling fees will be reviewed one year after the effective date of this rule and then periodically, but not less frequently than every four years. The amount presumed to be reasonable will be published by notice in the **Federal Register** and identified on the EOUST Web site. In addition, all credit counseling agencies must waive or reduce the fee if the client demonstrates a lack of ability to pay the fee, which shall be presumed if the client's current household income is less than 150 percent of the poverty level, as adjusted from time to time, for a household or family of the size involved in the fee determination. A credit counseling agency may rebut this presumption if it determines, based on income information provided by the client in connection with counseling services, that the client is able to pay the fee in a reduced amount. Please refer to the Regulatory Flexibility Act section for more analysis on the surety bond and insurance requirements, and for a discussion on fees and fee waivers.

Additionally, credit counseling agencies will incur *de minimus* recordkeeping costs. For instance, an agency will be required to maintain various records, such as records on which it relied in submitting its application; copies of the semi-annual reports; financial statements; ordinary business records; records on counseling services provided in languages other than English; fees; fee waiver and fee reduction statistics; complaints; and records enabling the agency to issue replacement certificates. All of these records combined should not equal more than a few pages or megabytes of information. Moreover, the increased specificity in this rule regarding records retention requirements reduce the burden on agencies because the Interim Final Rule required agencies to maintain business records, but did not specify which records needed to be kept, nor for how long. With implementation of this rule, agencies no longer need to keep every record for an unspecified amount of time in case such records are requested during an annual review or quality of service review.

The number of credit counseling agencies that ultimately will apply for approval is unknown, though EOUST currently has approved approximately 170 agencies. The annual hour burden on agencies is estimated to be 10 hours. This estimate is based on consultations with individuals in the credit counseling industry, and experience with credit counseling agencies who completed the initial applications. EOUST consulted with the Federal Trade Commission and with the Internal Revenue Service in drafting this rule and concludes that the rule does not have an adverse effect upon either agency.

The benefits of this rule include the development of standards that increase consumer protections, such as a limit on the presumption of reasonable fees, the requirement that agencies provide adequate disclosures concerning agencies' policies, and the preservation of clients' rights under 11 U.S.C. 502(k). This rule also provides for greater supervision by the United States Trustee to ensure agencies employ proper procedures to safeguard client funds. These benefits justify its costs in complying with Congress' mandate that a list of approved credit counseling agencies be established. Public Law 109–8, § 106(e)(1).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 to 3520, and assigned OMB control number 1105–0084 for form EOUST–CC1, the ''*Application for Approval as a Nonprofit Budget and Credit Counseling Agency.*'' The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process,

and that the applications and associated requirements were modified to take into account the concerns of those who commented in this process.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Director has reviewed this rule and, by approving it, certifies that, although it will affect a substantial number of small entities, the rule will not have a significant economic impact upon them. In 2006, when EOUST conducted a survey of the 119 credit counseling agencies that were approved at the time of the survey, 98 agencies responded to the survey, and 82 (or 84 percent) of those agencies qualified as small businesses under the Small Business Administration's guidelines. *See* 13 CFR § 121.201. Of the 82 agencies that qualified as small businesses, 91 percent of them reported that the cost to obtain a surety bond and insurance in accordance with specifications enunciated in the proposed rule amounted to less than one percent of gross revenue. Additionally, 90 percent of the agencies that qualified as small businesses reported that the cost was less than one percent of total expenditures. For the remaining ten percent of agencies, only three agencies reported the surety bond and insurance requirements equaled more than two percent of gross revenue; five reported that they equaled more than two percent of total expenditures, only one of which reported the surety bond and insurance requirements equaled three percent of gross revenue and expenditures. From this data, it is apparent that the surety bond and insurance requirements do not impose a significant economic impact on a substantial number of small entities.

This rule also sets forth guidance concerning the reasonable fee a credit counseling agency may charge (a presumptively reasonable fee of $50), and the criteria for determining fee waiver eligibility (presumed eligibility at household income of 150 percent of the poverty level). EOUST sought to establish formal guidance concerning fees, fee waivers and fee reductions based on a client's ''ability to pay the fee'' using objective criteria, taking into account the potential financial impact on the agencies as well as the needs of clients. 11 U.S.C. 111(c)(2)(B).

After carefully evaluating the credit counseling industry, EOUST based its fee guidance on current industry practice. Nearly 90 percent of approved credit counseling agencies charge $50 or less. According to a U.S. Government Accountability Office (''GAO'') report in 2007, the mean fee for credit counseling among all agencies was $47. *See* U.S. Gov't Accountability Office, GAO–07–203, Bankruptcy Reform: Value of Credit Counseling Requirement is Not Clear 30 (2007) (the ''GAO Report''). As of 2011, the mean fee for credit counseling among all agencies is $48. Among the ten largest credit counseling agencies (by certificate volume), nearly all charge $50 or less in fees. Only one of the ten largest agencies charges more than $50 (the agency in question charges $55 for counseling in person with a $10 discount for counseling by Internet). Three of the ten largest agencies charge substantially less than $50: one charges $36; another charges $30 ($50 for telephone counseling); and yet another charges $25. According to EOUST records, fee policies have not changed among the ten largest agencies since 2006.

In 2011, EOUST took a random sampling of ten credit counseling agencies that were not among the ten largest agencies to determine these agencies' fees. Of these ten agencies, nine charge $50 and the other agency charges $25. Accordingly, a $50 presumptively reasonable fee not only strikes an appropriate balance between the financial condition of prospective debtors and the financial viability of approved credit counseling agencies, but constitutes general practice in the credit counseling industry. Thus, establishing a presumptively reasonable fee of $50 does not impose a significant economic impact on credit counseling agencies. Rather, it embodies a fee structure already widespread in the industry.

Regarding fee waivers, similar to the requirement to charge ''reasonable'' fees, the requirement to waive fees when a client cannot pay is mandated by statute. 11 U.S.C. 111(c)(2)(B). With respect to the development of the fee waiver standard, the GAO undertook a study concerning, among other things, the incidence of fee waivers based on ability to pay. The GAO noted that the Interim Final Rule did not provide specific guidance on the criteria agencies should use to determine a client's ability to pay. *See* GAO Report at 29–32. The GAO noted variations in the rate of fee waivers and recommended that EOUST adopt clearer guidance to agencies to reduce uncertainty among agencies concerning appropriate fee waiver criteria, to improve transparency concerning EOUST's assessment of fee waiver policies, and to increase the availability of fee waivers by setting clear minimum benchmarks for ability to pay. *Id.* at 32, 40–41.

Among the ten largest credit counseling agencies, eight use household income at or below 150 percent of the poverty level as the threshold for determining eligibility for a fee waiver. One agency considers the debtor's income, housing status, and existence of severe hardship. The other agency uses household income at or below 100 percent of the poverty level as the threshold for determining eligibility for a fee waiver. In 2011, EOUST took a random sampling of ten credit counseling agencies that were not among the ten largest agencies to determine these agencies' fee waiver policies. Seven of the agencies use the 150 percent of poverty level standard; one uses the *in forma pauperis* or *pro bono* standard without specifying 150 percent; one uses 125 percent of the poverty level; and one uses 100 percent of the poverty level as the threshold for determining eligibility for a fee waiver.

In the proposed rule, EOUST proposed a bright-line standard establishing entitlement to a fee waiver for clients with household income equal to or less than 150 percent of the poverty level. That standard was based on the *in forma pauperis* standard set forth in 28 U.S.C. 1930(f)(1), which permits the bankruptcy court to waive filing fees for eligible individuals. The proposed rule standard did not grant agencies the discretion to determine whether clients otherwise were able to pay the fees.

Subsequently, EOUST received and considered comments to the proposed rule. EOUST agreed that implementation of the proposed standardized fee waiver raised some policy concerns. Because standardization fails to take into account local differences, disparate impact on agencies may result when agencies located in geographic areas of concentrated low income individuals are required to grant fee waivers at a higher rate than those in more affluent areas. Although an agency may apply to EOUST to increase its counseling fee by demonstrating that its costs of delivering services (including opportunity costs associated with waived or reduced fees) justify the proposed fee, increases in fees ultimately shift the fee burden to those clients more able to pay. As of July 2009, according to self-reporting by approved credit counseling agencies, without the proposed mandatory fee waiver, 10.8 percent of certificates were issued at no cost, with another 22.1 percent issued at reduced cost. In comparison, based on available data from 2005, approximately 30 percent of chapter 7 debtors were eligible to apply

for a waiver of the court filing fee pursuant to the 150 percent *in forma pauperis* standard. Based on this analysis, EOUST concluded that if agencies were subject to a mandatory fee waiver policy with respect to all such debtors based on the *in forma pauperis* standard, some agencies might suffer financial losses that would render them unable to provide services, reducing capacity to serve the overall potential debtor population.

Accordingly, EOUST revised this rule to include a rebuttable presumption to the objective fee waiver standard. In adopting the presumption, EOUST seeks to balance the need for an objective fee waiver standard and complying with 11 U.S.C. 111(c)(2)(B) with agencies' need to collect adequate fees for services provided. Under the rebuttable presumption, a client with household income equal to or less than 150 percent of the poverty level is presumptively entitled to a fee waiver, but the agency may determine, based on information it receives during the counseling session, that the client actually is able to pay the fee in part. In that case, the agency may charge the client a reduced fee, taking into account the client's actual ability to pay. This rebuttable presumption balances the need for an objective fee waiver standard, consumer protection, and the need to ensure agency compliance with the Bankruptcy Code with the agencies' need to collect adequate fees.

Additionally, although EOUST considered indexing fee waivers to client income, EOUST determined that such an indexing system fails to take into account the variation in ability to pay for clients at the same income level. For example, two clients may have income at 150 percent of the poverty level, but one client lives in a rent-free home and has few expenses while the other has significant expenses, such as accumulated medical debts or child support payments. An inflexible indexing standard does not take into account the individual's actual ability to pay the fee, as set forth in 11 U.S.C. 111(c)(2)(B). EOUST concluded that each agency should determine each client's eligibility based on the client's individual financial circumstances.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($100 million). 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 rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the United States Trustee to approve nonprofit budget and credit counseling agencies. The United States Trustee will not share this information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. 71 FR 59,818, 59,827 (October 11, 2006), JUSTICE/UST–005, Credit Counseling and Debtor Education Files and Associated Records.

Public Law 104–134 (April 26, 1996) requires that any person doing business with the federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to section 7701 of title 31, United States Code. Furnishing the Social Security Number and other data is voluntary, but failure to do so may delay or prevent action on the application.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, Part 58 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

■ 1. The authority citation for Part 58 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202, 1302, 1328(g), 28 U.S.C. 509, 510, 586, 589b.

■ 2. Sections 58.12 through 58.14 are added to read as follows:

§ 58.12 Definitions.

(a) The following definitions apply to §§ 58.12 through and including 58.24 of this Part and the applications and other materials agencies submit in an effort to establish they meet the requirements necessary to become an approved nonprofit budget and credit counseling agency.

(b) These terms shall have these meanings: (1) The term ''accreditation'' means the recognition or endorsement that an accrediting organization bestows upon an agency because the accrediting organization has determined the agency meets or exceeds all the accrediting organization's standards;

(2) The term ''accrediting organization'' means either an entity that provides accreditation to agencies or provides certification to counselors, provided, however, that an accrediting organization shall:

(i) Not be an agency or affiliate of any agency; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term ''adequate counseling'' means the actual receipt by a client from an approved agency of all counseling services, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 109(h);

(ii) 11 U.S.C. 111; and

(iii) This part;

(4) The term ''affiliate of an agency'' includes:

(i) Every entity that is an affiliate of the agency, as the term ''affiliate'' is defined in 11 U.S.C. 101(2), except that the word ''agency'' shall be substituted for the word ''debtor'' in 11 U.S.C. 101(2);

(ii) Each of an agency's officers and each of an agency's directors; and

(iii) Every relative of an agency's officers and every relative of an agency's directors;

(5) The term ''agency'' and the term ''budget and credit counseling agency'' shall each mean a nonprofit organization that is applying under this part for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved agency;

(6) The term ''application'' means the application and related forms, including appendices, approved by the Office of

Management and Budget as form EOUST–CC1, *Application for Approval as a Nonprofit Budget and Credit Counseling Agency,* as it shall be amended from time to time;

(7) The term ''approved agency'' means an agency currently approved by a United States Trustee under 11 U.S.C. 111 as an approved nonprofit budget and credit counseling agency eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(8) The term ''approved list'' means the list of agencies currently approved by a United States Trustee under 11 U.S.C. 111, as currently published on the United States Trustee Program's Internet site, which is located on the United States Department of Justice's Internet site;

(9) The term ''audited financial statements'' means financial reports audited by independent certified public accountants in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants;

(10) The term ''certificate'' means the certificate identified in 11 U.S.C. 521(b)(1) that an approved agency shall provide to a client after the client completes counseling services;

(11) The term ''client'' means an individual who both seeks and receives (or sought and received) counseling services from an approved agency;

(12) The term ''counseling services'' means all counseling required by 11 U.S.C. 109(h) and 111, and this part including, without limitation, services that are typically of at least 60 minutes in duration and that shall at a minimum include:

(i) Performing on behalf of, and providing to, each client a written analysis of that client's current financial condition, which analysis shall include a budget analysis, consideration of all alternatives to resolve a client's credit problems, discussion of the factors that caused such financial condition, and identification of all methods by which the client can develop a plan to respond to the financial problems without incurring negative amortization of debt; and

(ii) Providing each client the opportunity to have the agency negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k) or, if the client accepts this option and the agency is unable to provide this service, the agency shall refer the client to another approved agency in the appropriate federal judicial district that provides it;

(13) The term ''counselor certification'' means certification of a counselor by an accrediting organization because the accrediting organization has determined the counselor meets or exceeds all the accrediting organization's standards for counseling services or related areas, such as personal finance, budgeting, or credit or debt management;

(14) The term ''criminal background check'' means a report generated by a state law enforcement authority disclosing the entire state criminal history record, if any, of the counselor for whom the criminal background check is sought, for every state where the counselor has resided or worked during any part of the immediately preceding five years. If a criminal background check is not available for, or is not authorized by state law in, each of the states where the counselor has resided or worked during any part of the immediately preceding five years, the agency shall instead obtain at least every five years a sworn statement from each counselor attesting to whether the counselor has been convicted of a felony, or a crime involving fraud, dishonesty, or false statements;

(15) The term ''debt repayment plan'' means any written document suggested, drafted, or reviewed by an approved agency that either proposes or implements any mechanism by which a client would make payments to any creditor or creditors if, during the time any such payments are being made, that creditor or those creditors would forbear from collecting or otherwise enforcing their claim or claims against the client; provided, however, that any such written document shall not constitute a debt repayment plan if the client would incur a negative amortization of debt under it;

(16) The term ''Director'' means the person designated or acting as the Director of the Executive Office for United States Trustees;

(17) The term ''entity'' shall have the meaning given that term in 11 U.S.C. 101(15);

(18) The term ''fair share'' means payments by a creditor to an approved agency for administering a debt repayment plan;

(19) The terms ''fee'' and ''fee policy'' each mean the aggregate of all fees, contributions, and payments an approved agency charges clients for providing counseling services; ''fee policy'' shall also mean the objective criteria the agency uses in determining whether to waive or reduce any fee, contribution, or payment;

(20) The term ''final decision'' means the written determination issued by the Director based upon the review of the United States Trustee's decision either to deny an agency's application or to remove an agency from the approved list;

(21) The term ''financial benefit'' means any interest equated with money or its equivalent, including, but not limited to, stocks, bonds, other investments, income, goods, services, or receivables;

(22) The term ''governmental unit'' shall have the meaning given that term in 11 U.S.C. 101(27);

(23) The term ''independent contractor'' means a person or entity who provides any goods or services to an approved agency other than as an employee and as to whom the approved agency does not:

(i) Direct or control the means or methods of delivery of the goods or services being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(24) The term ''languages offered'' means every language other than English in which an approved agency provides counseling services;

(25) The term ''legal advice'' shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(26) The term ''limited English proficiency'' refers to individuals who:

(i) Do not speak English as their primary language; and

(ii) Have a limited ability to read, write, speak, or understand English;

(27) The term ''material change'' means, alternatively, any change:

(i) In the name, structure, principal contact, management, counselors, physical location, counseling services, fee policy, language services, or method of delivery of an approved agency; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement an agency or approved agency previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(28) The term ''method of delivery'' means one or more of the three methods by which an approved agency can provide some component of counseling services to its clients, including:

(i) ''In person'' delivery, which applies when a client primarily receives counseling services at a physical location with a credit counselor physically present in that location, and with the credit counselor providing oral and/or written communication to the client at the facility;

(ii) ''Telephone'' delivery, which applies when a client primarily receives counseling services by telephone; and

(iii) ''Internet'' delivery, which applies when a client primarily receives counseling services through an Internet Web site;

(29) The term ''nonprofit'' means, alternatively:

(i) An entity validly organized as a not-for-profit entity under applicable state or federal law, if that entity operates as a not-for-profit entity in full compliance with all applicable state and federal laws; or

(ii) A qualifying governmental unit;

(30) The term ''notice'' in § 58.24 means the written communication from the United States Trustee to an agency that its application to become an approved agency has been denied or to an approved agency that it is being removed from the approved list;

(31) The term ''potential client'' means an individual who seeks, but does not receive, counseling services from an approved agency.

(32) The term ''qualifying government unit'' means any governmental unit that, were it not a governmental unit, would qualify for tax-exempt status under 26 U.S.C. 501(c)(3), or would qualify as a nonprofit entity under applicable state law;

(33) The term ''referral fees'' means money or any other valuable consideration paid or transferred between an approved agency and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any client or potential client to receive counseling services from the approved agency; provided, however, that ''referral fees'' shall not include fees paid to the agency under a fair share agreement;

(34) The term ''relative'' shall have the meaning given that term in 11 U.S.C. 101(45);

(35) The term ''request for review'' means the written communication from an agency to the Director seeking review of the United States Trustee's decision either to deny the agency's application or to remove the agency from the approved list;

(36) The term ''state'' means state, commonwealth, district, or territory of the United States;

(37) The term ''tax waiver'' means a document sufficient to permit the Internal Revenue Service to release directly to the United States Trustee information about an agency;

(38) The term ''trust account'' means an account with a federally insured depository institution that is separated and segregated from operating accounts, which an approved agency shall maintain in its fiduciary capacity for the purpose of receiving and holding client funds entrusted to the approved agency; and

(39) The term ''United States Trustee'' means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this part.

§ 58.13 Procedures all agencies shall follow when applying to become approved agencies.

(a) An agency applying to become an approved agency shall obtain an application, including appendices, from the United States Trustee.

(b) The agency shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The agency shall submit the original of the completed application, including completed appendices and the required supporting documents, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by an agency representative who is authorized under applicable law to sign on behalf of the applying agency.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the agency, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application, and it may be returned if:

(1) It is incomplete;

(2) It fails to include the completed appendices or all of the required supporting documents; or

(3) It is not accompanied by the certification identified in paragraph (e) of this section.

(g) The United States Trustee shall not consider an application on behalf of an agency, and it shall be returned if:

(1) It is submitted by any entity other than the agency; or

(2) Either the application or the accompanying certification is executed by any entity other than an agency representative who is authorized under applicable law to sign on behalf of the agency.

(h) By the act of submitting an application, an agency consents to the release and disclosure of its name, contact information, and non-confidential business information relating to the services it provides on the approved list should its application be approved.

§ 58.14 Automatic expiration of agencies' status as approved agencies.

(a) Except as provided in § 58.15(c), if an approved agency was not an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an approved agency shall cease to be an approved agency six months from the date on which it was approved unless the United States Trustee approves an additional one year period.

(b) Except as provided in § 58.15(c), if an approved agency was an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an agency shall cease to be an approved agency one year from the date on which it was last approved to be an approved agency unless the United States Trustee approves an additional one year period.

■ 3. Sections 58.15 through 58.17 are revised to read as follows:

§ 58.15 Procedures all approved agencies shall follow when applying for approval to act as an approved agency for an additional one year period.

(a) To be considered for approval to act as an approved agency for an additional one year term, an approved agency shall reapply by complying with all the requirements specified for agencies under 11 U.S.C. 109(h) and 111, and under this part.

(b) Such an agency shall apply no later than 45 days prior to the expiration of its six month probationary period or annual period to be considered for approval for an additional one year period, unless a written extension is granted by the United States Trustee.

(c) An approved agency that has complied with all prerequisites for applying to act as an approved agency for an additional one year period may continue to operate as an approved agency while its application is under review by the United States Trustee, so long as either the application for an additional one year period is timely submitted, or an agency receives a

written extension from the United States Trustee.

§ 58.16 Renewal for an additional one year period.

If an approved agency's application for an additional one year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

§ 58.17 Mandatory duty of approved agencies to notify United States Trustees of material changes.

(a) An approved agency shall immediately notify the United States Trustee in writing of any material change.

(b) An approved agency shall immediately notify the United States Trustee in writing of any failure by the approved agency to comply with any standard or requirement specified in 11 U.S.C. 109(h) or 111, this part, or the terms under which the United States Trustee approved it to act as an approved agency.

(c) An approved agency shall immediately notify the United States Trustee in writing of any of the following events:

(1) Notification by the Internal Revenue Service or by a state or local taxing authority that the approved agency has been selected for audit or examination regarding its tax-exempt status, or any notification of a compliance check by the Internal Revenue Service or by a state or local taxing authority;

(2) Revocation or termination of the approved agency's tax-exempt status by any governmental unit or by any judicial officer;

(3) Cessation of business by the approved agency or by any office of the agency, or withdrawal from any federal judicial district(s) where the approved agency is approved;

(4) Any investigation of, or any administrative or judicial action brought against, the approved agency by any governmental unit;

(5) Termination or cancellation of any surety bond or fidelity insurance;

(6) Any administrative or judicial action brought by any entity that seeks recovery against a surety bond or fidelity insurance;

(7) Any action by a governmental unit or a court to suspend or revoke the approved agency's articles of incorporation, or any license held by the approved agency, or any authorization necessary to engage in business;

(8) A suspension, or action to suspend, any accreditation held by the approved agency, or any withdrawal by the approved agency of any application for accreditation, or any denial of any application of the approved agency for accreditation;

(9) A change in the approved agency's nonprofit status under any applicable law;

(10) Any change in the banks or financial institutions used by the agency; and

(11) [reserved].

(d) An agency shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved agency is pending before the United States Trustee.

(e) An approved agency whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

■ 4. Sections 58.18 through 58.24 are added to read as follows:

§ 58.18 Mandatory duty of approved agencies to obtain prior consent of the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved agency, an agency agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) Cancellation or change in the amount of the surety bond or employee fidelity bond or insurance;

(2) The engagement of an independent contractor to provide counseling services or to have access to, possession of, or control over client funds;

(3) Any increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's fee policy;

(4) Expansion into additional federal judicial districts;

(5) Any changes to the method of delivery the approved agency employs to provide counseling services; or

(6) Any changes in the approved agency's counseling services.

(b) An agency applying to become an approved agency shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The agency's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in § 58.13(e).

(c) An approved agency shall not transfer or assign its United States Trustee approval to act as an approved agency.

§ 58.19 Continuing requirements for becoming and remaining approved agencies.

(a) To become an approved agency, an agency must affirmatively establish, to the satisfaction of the United States Trustee, that the agency at the time of approval:

(1) Satisfies every requirement of this part; and

(2) Provides adequate counseling to its clients.

(b) To remain an approved agency, an approved agency shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved agency:

(1) Has satisfied every requirement of this part;

(2) Has provided adequate counseling to its clients; and

(3) Would continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

§ 58.20 Minimum qualifications agencies shall meet to become and remain approved agencies.

To meet the minimum qualifications set forth in § 58.19, and in addition to the other requirements set forth in this part, agencies and approved agencies shall comply with paragraphs (a) through (p) of this section on a continuing basis:

(a) *Compliance with all laws.* An agency shall comply with all applicable laws and regulations of the United States and each state in which the agency provides counseling services including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* An agency shall not provide legal advice.

(c) *Structure and organization.* An agency shall:

(1) Be lawfully organized and operated as a nonprofit entity; and

(2) Have a board of directors, the majority of which:

(i) Are not relatives;

(ii) Are not employed by such agency; and

(iii) Will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency.

(d) *Ethical standards.* An agency shall:

(1) Not engage in any conduct or transaction, other than counseling services, that generates a direct or indirect financial benefit for any member of the board of directors or

trustees, officer, supervisor, or any relative thereof;

(2) Ensure no member of the board of directors or trustees, officer, or supervisor receives any commissions, incentives, bonuses, or benefits (monetary or non-monetary) of any kind that are directly or indirectly based on the financial or legal decisions any client makes after requesting counseling services;

(3) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 28 U.S.C. 586(a)(1) or (b) for any federal judicial district where the agency is providing or is applying to provide counseling services, a federal judge in any federal judicial district where the agency is providing or is applying to provide counseling services, a federal court employee in any federal judicial district where the agency is providing or is applying to provide counseling services, or a certified public accountant that audits the agency's trust account;

(4) Not enter into any referral agreement or receive any financial benefit that involves the agency paying to or receiving from any entity or person referral fees for the referral of clients to or by the agency, except payments under a fair share agreement;

(5) Not enter into agreements involving counseling services that create a conflict of interest; and

(6) Not provide counseling services to a client with whom the agency has a lender-borrower relationship.

(e) *Use of credit counselors.* An agency shall have a credit counselor provide the counseling services to each of the agency's clients. The credit counselor shall interact with the client regarding the accuracy of the information obtained from the client and the alternatives available to the client for dealing with his or her current financial situation, including the plan developed to address such financial situation.

(f) *Credit counselor training, certification and experience.* An agency shall:

(1) Use only counselors who possess adequate experience providing credit counseling, which shall mean that each counselor either:

(i) Holds a counselor certification and who has complied with all continuing education requirements necessary to maintain his or her counselor certification; or

(ii) Has successfully completed a course of study and worked a minimum of six months in a related area such as personal finance, budgeting, or credit or debt management. A course of study shall include training in counseling skills, personal finance, budgeting, or credit or debt management. A counselor shall also receive annual continuing education in the areas of counseling skills, personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing credit counseling, which shall mean that, at a minimum, the agency shall either:

(i) Have experience in providing credit counseling for the two years immediately preceding the relevant application date; or

(ii) For each office providing counseling services, employ at least one supervisor who has met the qualifications in paragraph (f)(2)(i) of this section for no fewer than two of the five years preceding the relevant application date;

(3) If offering any component of counseling services by a telephone or Internet method of delivery, use only counselors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such counseling services by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the counseling services is the client, and to determine whether the client has completely received counseling services.

(g) *No variation in services.* An agency shall ensure that the type and quality of services do not vary based on a client's decision whether to obtain a certificate in lieu of other options that may or may not be suggested by the agency.

(h) *Use of the telephone and the Internet to deliver a component of client services.* An agency shall:

(1) Not provide any client diminished counseling services because the client receives any portion of those counseling services by telephone or Internet;

(2) Confirm the identity of the client before receiving counseling services by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the client and assigning an individual access code, user ID, or password at the time of enrollment; and

(ii) Requiring the client to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the counseling services.

(i) *Services to hearing and hearing-impaired clients and potential clients.* An agency shall furnish toll-free telephone numbers for both hearing and hearing-impaired clients and potential clients whenever telephone communication is required. The agency shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired clients or potential clients.

(j) [reserved].

(k) *Services to clients and potential clients with special needs.* An agency that provides any portion of its counseling in person shall comply with all federal, state and local laws governing facility accessibility. An agency shall also provide or arrange for communication assistance for clients or potential clients with special needs who have difficulty making their service needs known.

(l) *Mandatory disclosures to clients and potential clients.* Prior to providing any information to or obtaining any information from a client or potential client, and prior to rendering any counseling service, an agency shall disclose:

(1) The agency's fee policy, including any fees associated with generation of the certificate;

(2) The agency's policies enabling clients to obtain counseling services for free or at reduced rates based upon the client's lack of ability to pay. To the extent an agency publishes information concerning its fees on the Internet, such fee information must include the agency's policies enabling clients to obtain counseling for free or at reduced rates based upon the client's lack of ability to pay;

(3) The agency's policy to provide free bilingual counseling services or professional interpreter assistance to any limited English proficient client;

(4) The agency's funding sources;

(5) The counselors' qualifications;

(6) The potential impacts on credit reports of all alternatives the agency may discuss with the client;

(7) The agency's policy prohibiting it from paying or receiving referral fees for the referral of clients, except under a fair share agreement;

(8) The agency's obligation to provide a certificate to the client promptly upon the completion of counseling services;

(9) A statement that the client has the opportunity to negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k), and a statement whether or not the agency will provide this service. If the agency does not provide this service, it shall disclose that it may refer the client to another approved agency, and shall disclose that clients may incur additional fees in connection with such a referral;

(10) The fact that the agency might disclose client information to the United States Trustee in connection with the United States Trustee's oversight of the agency, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(11) The fact that the United States Trustee has reviewed only the agency's credit counseling services (and, if applicable, its services as a provider of a personal financial management instructional course pursuant to 11 U.S.C. 111(d)), and the fact that the United States Trustee has neither reviewed nor approved any other services the agency provides to clients; and

(12) The fact that a client will receive a certificate only if the client completes counseling services.

(m) *Complaint Procedures.* An agency shall employ complaint procedures that adequately respond to clients' concerns.

(n) *Background checks.* An agency shall:

(1) Conduct a criminal background check at least every five years for each person providing credit counseling, and

(2) Not employ anyone as a counselor who has been convicted of any felony, or any crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines circumstances warrant a waiver of this prohibition against employment.

(o) *Agency records.* An agency shall prepare and retain records that enable the United States Trustee to evaluate whether the agency is providing adequate counseling and acting in compliance with all applicable laws and this part. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the agency shall prepare and retain for a minimum of two years, and permit review by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the agency remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Annual audited financial statements, including the audited balance sheet, statement of income and retained earnings, and statement of changes in financial condition;

(4) Books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including, without limitation, copies of all correspondence with or on behalf of the client, including the contract between the agency and the client and any amendments thereto;

(5) Records concerning the delivery of services to clients and potential clients with limited English proficiency and special needs, and to hearing-impaired clients and potential clients, including records:

(i) Of the number of such clients and potential clients, and the methods of delivery used with respect to such clients and potential clients;

(ii) Of which languages are offered or requested and the type of language support used or requested by such clients or potential clients (*e.g.,* bilingual instructor, in-person or telephone interpreter, translated web instruction);

(iii) Detailing the agency's provision of services to such clients and potential clients; and

(iv) Supporting any justification if the agency did not provide services to such potential clients, including the number of potential clients not served, the languages involved, and the number of referrals provided;

(6) Records concerning the delivery of counseling services to clients for free or at reduced rates based upon the client's lack of ability to pay, including records of the number of clients for whom the agency waived all of its fees under § 58.21(b)(1)(i), the number of clients for whom the agency waived all or part of its fees under § 58.21(b)(1)(ii), and the number of clients for whom the agency voluntarily waived all or part of its fees under § 58.21(c);

(7) Records of complaints and the agency's responses thereto;

(8) Records that enable the agency to verify the authenticity of certificates their clients file in bankruptcy cases; and

(9) Records that enable the agency to issue replacement certificates.

(p) *Additional minimum requirements.* An agency shall:

(1) Provide records to the United States Trustee upon request;

(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the agency's qualifications to be an approved agency;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the credit counseling or bankruptcy process;

(5) Not exclude any client or creditor from a debt repayment plan because the creditor declines to make a fair share contribution to the agency;

(6) Take no action that would limit, inhibit, or prevent a client from bringing an action or claim for damages against an agency, as provided in 11 U.S.C. 111(g)(2);

(7) Refer clients and prospective clients for counseling services only to agencies that have been approved by a United States Trustee to provide such services;

(8) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in Appendix A to the application;

(9) Not disclose or provide to a credit reporting agency any information concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency;

(10) Not expose the client to commercial advertising as part of or during the client's receipt of any counseling services, and never market or sell financial products or services during the counseling session provided, however, this provision does not prohibit an agency from generally discussing all available financial products and services;

(11) Not sell information about any client or potential client to any third party without the client or potential client's prior written permission;

(12) If the agency is tax-exempt, submit a completed and signed tax waiver permitting and directing the Internal Revenue Service to provide the United States Trustee with access to the Internal Revenue Service's files relating to the agency;

(13) Comply with the requirements elsewhere in this part concerning fees for credit counseling services and fee waiver policies; and

(14) Comply with the requirements elsewhere in this part concerning certificates.

§ 58.21 Minimum requirements to become and remain approved agencies relating to fees.

(a) If a fee for, or relating to, credit counseling services is charged by an agency, such fee shall be reasonable:

(1) A fee of $50 or less for credit counseling services is presumed to be reasonable and an agency need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding $50 for credit counseling services is not presumed to be reasonable and an agency must obtain prior approval from the United States Trustee to charge such a fee. The agency bears the burden of establishing that its proposed fee is reasonable. At a minimum, the agency must demonstrate that its cost for delivering such services justify the fee. An agency that previously received permission to charge a higher fee need not reapply for permission to charge that fee during the agency's annual review. Any new requests for permission to charge more than previously approved, however, must be submitted to EOUST for approval; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the **Federal Register**.

(b)(1) An agency shall waive the fee in whole or in part whenever a client demonstrates a lack of ability to pay the fee.

(i) A client presumptively lacks the ability to pay the fee if the client's household current income is less than 150 percent of the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination.

(ii) The presumption shall be rebutted, and the agency may charge the client a reduced fee, if the agency determines, based on income information the client submits in connection with counseling services, that the client is able to pay the fee in a reduced amount. Nothing in this section requires an agency to charge a fee to clients whose household income exceeds the amount set forth in paragraph (b)(1)(i) of this section, or who are able to demonstrate ability to pay based on income as described in this section.

(iii) An agency shall disclose its fee policy, including the criteria on which it relies in determining a client's eligibility for reduced fees, and the agency's policy for collecting fees pursuant to paragraph (b)(1)(ii) of this section, in accordance with § 58.20(l)(2).

(2) The United States Trustee shall review the basis for the mandatory fee waiver policy set forth in paragraph (b)(1) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the impact of that fee waiver policy on clients and agencies. Any revisions to the mandatory fee waiver policy set forth in paragraph (b)(1) of this section shall be published in the **Federal Register**.

(c) Notwithstanding the requirements of paragraph (b) of this section, an agency may also waive fees based upon other considerations, including, but not limited to:

(1) The client's net worth;

(2) The percentage of the client's income from government assistance programs;

(3) Whether the client is receiving *pro bono* legal services in connection with a filed or anticipated bankruptcy case; or

(4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the client and his or her spouse, when multiplied times twelve, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) An agency shall not require a client to purchase counseling services in connection with the purchase of any other service offered by the agency.

§ 58.22 Minimum requirements to become and remain approved agencies relating to certificates.

(a) An approved agency shall send a certificate only to the client who took and completed the counseling services, except that an approved agency shall instead send a certificate to the attorney of a client who took and completed counseling services if the client specifically directs the agency to do so. In the case of Internet counseling and automated telephone counseling, counseling is not complete until the client has engaged in interaction with a counselor, whether by electronic mail, live chat, or telephone, following the automated portion of the counseling session.

(b) An approved agency shall attach to the certificate the client's debt repayment plan (if any).

(c) An approved agency shall send a certificate to a client no later than one business day after the client completed counseling services. If a client has completed counseling services, an agency may not withhold certificate issuance for any reason. An agency may not consider counseling services incomplete based solely on the client's failure to pay the fee.

(d) If an approved agency provides other financial counseling in addition to counseling services, and such other financial counseling satisfies the requirements for counseling services specified in 11 U.S.C. 109(h) and 111, and this part, a person completing such other financial counseling is a client and the approved agency shall send a certificate to the client no later than one business day after the client's request. The approved agency shall not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with § 58.20(l)(1).

(e) An approved agency shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee, except under exigent circumstances with notice to the United States Trustee.

(f) An approved agency shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(g) An approved agency shall issue a certificate to each client who completes counseling services. Spouses receiving counseling services jointly shall each receive a certificate.

(h) An approved agency shall issue a replacement certificate to a client who requests one.

(i) An approved agency shall not file certificates with the court.

(j) Only an authorized officer, supervisor or employee of an approved agency shall issue a certificate, and an approved agency shall not transfer or delegate authority to issue certificates to any other entity.

(k) An approved agency shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(l) An approved agency shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (j) of this section, which signature shall be either:

(1) An original signature; or

(2) In a format approved for electronic filing with the court (most typically in the form/s/name of counselor).

(m) An approved agency shall affix to the certificate the exact name under which the approved agency is incorporated or organized.

(n) An approved agency shall identify on the certificate:

(1) The specific federal judicial district requested by the client;

(2) Whether counseling services were provided in person, by telephone or via the Internet;

(3) The date and time (including the time zone) on which counseling services were completed by the client; and

(4) The name of the counselor that provided the counseling services.

(o) An approved agency shall affix the client's full, accurate name to the certificate. If the counseling services are obtained by a client through a duly authorized representative, the certificate also shall set forth the name of the legal representative and legal capacity of that representative.

(p) If an individual enters into a debt repayment plan after completing credit counseling, upon the client's request after the completion or termination of the debt repayment plan, the approved agency shall:

(1) Provide such additional credit counseling as is necessary at such time to comply with the requirements specified in 11 U.S.C. 109(h) and 111, and this part, including reviewing the client's current financial condition and counseling the client regarding the alternatives to resolve the client's credit problems;

(2) Send a certificate to the client no later than one business day after the client completed such additional counseling; and

(3) Not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with § 58.20(l)(1).

§ 58.23 Minimum financial requirements and bonding and insurance requirements for agencies offering debt repayment plans.

If an agency offers or has offered debt repayment plans, an agency shall possess adequate financial resources to provide continuing support services for such plans over the life of any debt repayment plan, and provide for the safekeeping of client funds, which shall include:

(a) Depositing all client funds into a deposit account, held in trust, at a federally insured depository institution. Each such trust account shall be established in a fiduciary capacity and shall be in full compliance with federal law such that each client's funds shall be protected by federal deposit insurance up to the maximum amount allowable by federal law.

(b) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, all of the following:

(1) Separate files for each client's account that include copies of all correspondence with or on behalf of the client, including:

(i) All agreements with all entities, including the contract between the agency and the client and any amendments thereto;

(ii) The analysis of the client's budget;

(iii) Correspondence between the agency and the client's creditors;

(iv) The notice given to creditors of any debt repayment plan; and

(v) All written statements of account provided to the client and subsidiary ledgers concerning any debt repayment plan;

(2) A trust account general ledger reflecting all deposits to and disbursements from all trust accounts, which shall be kept current at all times;

(3) A reconciliation of the trust accounts, prepared at least once a month; and

(4) An operating account general ledger reflecting all of the agency's financial transactions involving the agency's operating account, which shall be kept current at least on a monthly basis.

(c) Allowing an independent certified public accounting firm to audit the trust accounts annually in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and any Statement of Work prepared by the United States Trustee, which audit shall include:

(1) A report of all trust account activity including:

(i) The balance of each trust account at the beginning and end of the period;

(ii) The total of all receipts from clients and disbursements to creditors during the reporting period;

(iii) The total of all disbursements to the agency; and

(iv) The reconciliation of each trust account;

(2) A report of all exceptions (*e.g.,* discrepancies, irregularities, and errors) found, regardless of materiality; and

(3) An evaluation of the agency's trust account internal controls and its computer operations to determine whether it provides a reasonable assurance that the trust funds are safeguarded against loss from unauthorized use or disposition.

(d) Obtaining a surety bond payable to the United States, as follows:

(1) Subject to the minimum amount of $5,000, the amount of such surety bond shall be the lesser of:

(i) Two percent of the agency's disbursements made during the twelve months immediately prior to submission of the application from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee; or

(ii) Equal to the average daily balance maintained for the six months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee;

(2) The agency may receive an offset or credit against the surety bond amount determined under paragraph (d)(1) of this section if:

(i) The agency has previously obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit in compliance with the licensing requirements of the state in which the agency seeks approval from the United States Trustee;

(ii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, is written in favor of the state or the appropriate state agency; and

(iv) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit; or

(B) The surety bond amount determined under paragraph (d)(1) of this section;

(3) If an agency has contracted with an independent contractor to administer any part of its debt repayment plans:

(i) Except as provided in paragraphs (d)(3)(ii) and (d)(3)(iii) of this section, the independent contractor shall:

(A) Be an approved agency; or

(B) If the independent contractor is not an approved agency, then the independent contractor shall:

(*1*) Be specifically covered under the agency's surety bond required under paragraph (d)(1) of this section; or

(*2*) Have a surety bond that meets the requirements of paragraph (d)(1) of this section; and

(*3*) Agree in writing to allow the United States Trustee to audit the independent contractor's trust accounts for the debt repayment plans administered on behalf of the agency and to review the independent contractor's internal controls and administrative procedures;

(ii) If the independent contractor holds funds for transmission for five days or less, then the amount of the required surety bond under paragraph (d)(3)(i)(B) of this section shall be $500,000;

(iii) If the independent contractor performs only electronic fund transfers on the agency's behalf, then the independent contractor need not satisfy the requirements of paragraph (d)(3)(i) of this section during such time as the independent contractor is authorized by the National Automated Clearing House Association to participate in the Automated Clearing House system.

(e) Obtaining either adequate employee bonding or fidelity insurance, as follows:

(1) Subject to the minimum amount set forth below, the amount of such bonding or fidelity insurance shall be 50 percent of the surety bond amount calculated under paragraph (d)(1) of this section, prior to any offset or credit that the agency may receive under paragraph (d)(2) of this section; provided, however, that at a minimum, the employee bond or fidelity insurance must be $5,000;

(2) An agency may receive an offset or credit against the employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section if:

(i) The agency has previously obtained an employee bond or fidelity insurance in compliance with the requirements of a state in which the agency seeks approval from the United States Trustee; and

(ii) The deductible does not exceed a reasonable amount considering the financial resources of the agency; and

(iii) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such employee bond or fidelity insurance; or

(B) The employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section.

(f) An agency that ceases to offer debt repayment plans to individuals who receive counseling from such agency pursuant to 11 U.S.C. 109(h) shall, concerning any debt repayment plans it services that remain in existence with respect to such individuals as of the date it ceases to offer debt repayment plans to new clients, continue to comply with all of the requirements of this section.

(1) The agency may seek a waiver of the bonding and insurance requirements set forth in paragraphs (d) and (e) of this section if:

(i) The agency has in effect, as of the date it ceases to offer debt repayment plans, a written agreement to transfer all such debt repayment plans to another approved agency for servicing, provided that:

(A) Transfers to another approved agency pursuant to such agreements must be completed within 60 days of the date the agency ceases to offer debt repayment plans to individuals who receive counseling from such agency pursuant to 11 U.S.C. § 109(h); and

(B) The agency provides written notice to clients whose debt repayment plans it intends to transfer within the time described in paragraph (f)(1)(i)(A) of this section, identifying the approved agency to which the clients' plans will be transferred, any fees associated with servicing by the approved agency, and any fees associated with the transfer; or

(ii) In the reasonable determination of the United States Trustee, taking into account the facts and circumstances surrounding the agency's business and the terms of the bond, compliance with the bonding and insurance requirements set forth in paragraphs (d) and (e) of this section would impose an undue hardship on the agency.

§ 58.24 Procedures for obtaining final agency action on United States Trustees' decisions to deny agencies' applications and to remove approved agencies from the approved list.

(a) The United States Trustee shall remove an approved agency from the approved list whenever an approved agency requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved agency from the approved list, and thereby terminate the approved agency's authorization to provide counseling services, at any time.

(c) The United States Trustee may issue a decision to deny an agency's application or to remove an agency from the approved list whenever the United States Trustee determines that the agency has failed to comply with the standards or requirements specified in 11 U.S.C. 109(h) or 111, this part, or the terms under which the United States Trustee designated it to act as an approved agency, including, but not limited to, finding any of the following:

(1) The agency is not employing adequate procedures for safekeeping of client funds or paying client funds, which could result in a loss to a client;

(2) The agency's surety bond has been canceled;

(3) Any entity has revoked the agency's nonprofit status, even if that revocation is subject to further administrative or judicial litigation, review or appeal;

(4) Any entity has suspended or revoked the agency's license to do business in any jurisdiction; or

(5) Any United States district court has removed the agency under 11 U.S.C. § 111(e).

(d) If the Internal Revenue Service revokes an agency's tax exempt status, the United States Trustee shall promptly commence an investigation to determine whether any of the factors set forth in paragraphs (c)(1) through (5) of this section exist.

(e) The United States Trustee shall provide to the agency in writing a notice of any decision either to:

(1) Deny the agency's application; or

(2) Remove the agency from the approved list.

(f) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the agency copies of any such documents that were not supplied to the United States Trustee by the agency. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(g) Except as provided in paragraph (i) of this section, the notice shall advise the agency that the denial or removal decision shall become final agency action, and unreviewable, unless the agency submits in writing a request for review by the Director no later than 21 calendar days from the date of the notice to the agency.

(h) Except as provided in paragraph (i) of this section, the decision to deny an agency's application or remove an agency from the approved list shall take effect upon:

(1) The expiration of the agency's time to seek review from the Director, if the agency fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final decision, if the agency timely seeks such review.

(i) The United States Trustee may provide that a decision to remove an agency from the approved list is effective immediately and deny the agency the right to provide counseling services whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) through (5) of this section.

(j) An agency's request for review shall be in writing and shall fully describe why the agency disagrees with

the denial or removal decision, and shall be accompanied by all documents and materials the agency wants the Director to consider in reviewing the denial or removal decision. The agency shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. To be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the agency.

(k) The United States Trustee shall have 21 calendar days from the date of the agency's request for review to submit to the Director a written response regarding the matters raised in the agency's request for review. The United States Trustee shall provide a copy of this response to the agency by overnight courier, for delivery the next business day.

(l) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(m) In reviewing the decision to deny an agency's application or remove an agency from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(n) Except as provided in paragraph (o) of this section, the Director shall issue a final decision no later than 60 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the agency's request for review shall constitute final agency action.

(o) Whenever the United States Trustee provides under paragraph (i) of this section that a decision to remove an agency from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time. The decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the agency should be removed from the approved list; after issuing the decision, the Director shall issue a final decision by the deadline set forth in paragraph (n) of this section.

(p) In reaching a decision under paragraphs (n) and (o) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(q) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

(r) When a decision to remove an agency from the approved list takes effect, the agency shall:

(1) Immediately cease providing counseling services to clients and shall not provide counseling services to potential clients;

(2) No later than three business days after the date of removal, send all certificates to all clients who completed counseling services prior to the agency's removal from the approved list;

(3) No later than three business days after the date of removal, return all fees to clients and potential clients who had paid for counseling services, but had not completely received them; and

(4) Transfer any debt repayment plans that the agency is administering to another approved agency.

(s) An agency must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: February 14, 2013.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. 2013–04361 Filed 3–13–13; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No EOUST 104]

RIN 1105–AB31

Application Procedures and Criteria for Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Final rule.

SUMMARY: This final rule (''rule'') sets forth procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved providers of a personal financial management instructional course (''providers'') satisfy all prerequisites of the United States Code, as implemented under this rule. Under the current law, individual debtors must participate in an instructional course concerning personal financial management (''instructional course'' or ''debtor education'') before receiving a discharge of debts. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved providers must meet. Under this rule, United States Trustees will approve applicants for inclusion on publicly available provider lists in one or more federal judicial districts if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such approval, a provider shall be authorized to provide an instructional course in a federal judicial district during the time the provider remains approved.

EOUST intends to add to its regulations governing debtor education providers, two new provisions not previously included in the proposed rule. The first provision will amend section 58.30(c)(5) to require providers to notify the United States Trustee of certain actions pursuant to 11 U.S.C. 111(g)(2) or other consumer protection statutes, such as an entry of judgment or mediation award, or the provider's entry into a settlement order, consent decree, or assurance of voluntary compliance. The second provision will amend section 58.33(*i*) to require a provider to assist an individual with limited English proficiency by expeditiously directing the individual to a provider that can provide instruction in the language of the individual's choice. Because these provisions were not discussed in the proposed rule published on November 14, 2008, EOUST will publish another Notice of Proposed Rulemaking requesting public comment with respect to these two provisions.

DATES: *Effective Date:* This rule is effective April 15, 2013.

ADDRESSES: EOUST, 441 G Street, NW., Suite 6150, Washington, DC, 20530.

FOR FURTHER INFORMATION CONTACT: Doreen Solomon, Assistant Director for Oversight on (202) 307–2829 (not a toll-free number), Wendy Tien, Deputy Assistant Director for Oversight on (202) 307–3698 (not a toll-free number), or Larry Wahlquist, Office of the General

Counsel on (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On July 5, 2006, EOUST published an interim final rule entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees* (''Interim Final Rule''). 71 FR 38,076 (July 5, 2006). Due to the necessity of quickly establishing a regulation to govern the debtor education application process, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking (''proposed rule''). On November 14, 2008, at 73 FR 67,435, EOUST published a proposed rule on this topic in an effort to maximize public input, rather than publishing a final rule after publication of the Interim Final Rule. Before the comment period closed on January 13, 2009, EOUST received eleven comments. The comments received and EOUST's responses are discussed below. This rule finalizes the proposed rule with changes that, in some cases, reduce the burden on providers while maintaining adequate protection for debtors.

This rule implements the debtor education sections of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (''BAPCPA''), Public Law 109–8, 119 Stat. 23, 37, 38 (April 20, 2005), which are codified at 11 U.S.C. 111. Effective October 17, 2005, individual debtors under chapters 7, 13, and in some instances chapter 11, must receive from an approved provider debtor education before they may receive a discharge of their debts. 11 U.S.C. 111, 727(a)(11), 1141(d)(3), 1328(g)(1).

Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of debtor education providers for inclusion under 11 U.S.C. 111(a)(1) on publicly available provider lists in one or more United States district courts. Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become an approved provider only after the United States Trustee has thoroughly reviewed the applicant's (a) qualifications, and (b) instructional course. 11 U.S.C. 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. 11 U.S.C. 111(b)(1). EOUST reserves the right to publish on its public Web site non-confidential business information relating to debtor education providers, including contact information, services provided, language support services offered, and fees charged for services.

After completing that thorough review, a United States Trustee may approve a debtor education provider only if the provider establishes that it fully satisfies all requisite standards. 11 U.S.C. 111(b). Among other things, an applicant must establish it will (a) provide trained personnel with adequate experience in providing effective instruction and services, (b) provide learning materials and teaching methodologies designed to assist debtors in understanding personal financial management, (c) if applicable, provide adequate facilities for providing an instructional course, (d) prepare and retain reasonable records to permit evaluation of the effectiveness of an instructional course, and (e) if a fee is charged, charge a reasonable fee, and provide services without regard to ability to pay the fee. 11 U.S.C. 111(d)(1).

This rule will implement those statutory requirements. By accomplishing that, the rule will help debtors obtain effective instruction from competent providers. It also will provide an appropriate mechanism by which applicants can apply for approval under section 111 of title 11 to become approved providers, and will enable such applicants to attempt to meet their burden of establishing they should be approved by United States Trustees under 11 U.S.C. 111.

Summary of Changes in Final Rule

The final rule modifies the proposed rule by making it: (1) Less burdensome on providers; and (2) by providing technical or clarifying modifications. The modifications are summarized according to their classification below. A parenthetical reference to the regulatory text has been added to assist the reader in locating the relevant provisions of the rule. In addition, where applicable, a reference to the comment number, where a more detailed explanation of these changes is discussed, is included:

Modifications To Make the Final Rule Less Burdensome on Providers

- The definition of ''material change'' has been revised to eliminate staff other than the provider's management or instructors (§ 58.25(b)(22)—comment # B6).
- A provider may disclose to debtors that, to the extent the provider is approved as a nonprofit budget and credit counseling agency pursuant to 11 U.S.C. 111(c), the United States Trustee has reviewed those credit counseling services (§ 58.33(k)(8)—comment # B23).
- The reference to ''any applicable law'' in the prohibition that a provider take no action to limit debtors from bringing claims against the provider as provided in 11 U.S.C. 111(g)(2) has been deleted (§ 58.33(n)(5)—comment # B25).
- The rule has been revised to add a rebuttable presumption that a debtor lacks the ability to pay the instructional fee if the debtor's current household income is less than 150 percent of the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination (§ 58.34(b)(1)—comment # B28).
- The United States Trustee is required to review the basis for the mandatory fee waiver policy one year after the effective date of the rule, and then periodically, but not less frequently than every four years (§ 58.34(b)(2)—comment # B28).
- The requirement that, for a provider to send an instructional certificate to a debtor's attorney, the debtor must make the request in writing to the provider has been deleted (§ 58.35(a)—comment # B30).
- The requirement that providers provide original signatures on certificates, in recognition of electronic filing in the bankruptcy courts and the technology used to generate certificates, has been deleted (§ 58.35(j)(2)—comment # B34).
- The prohibition that providers not file certificates with the court has been deleted to enable providers to file certificates with the court should the Federal Rules of Bankruptcy Procedure be amended to authorize providers to file certificates with the court or to otherwise notify the bankruptcy court of course completion (§ 58.35(i) of the proposed rule).

Technical or Clarifying Modifications

- The definition of ''debtor'' has been revised to apply only to such debtors that have sought an instructional course from an approved provider (§ 58.25(b)(8)—comment # B2).
- The definition of ''limited English proficiency'' has been revised to be consistent with that used by the Civil Rights Division of the Department of Justice (§ 58.25(b)(21)—comment # B5).
- The definition of ''material change'' has been amended to include a change in language services provided by the provider. Providers are already required to inform the United States Trustee of the languages they provide when

applying for approval. This clarification emphasizes the importance of notifying the United States Trustee whenever a provider adds or removes a language from its available services (§ 58.25(b)(22)).

- The rule has been amended to clarify that providers may not use direct mail or electronic mail solicitations to contact debtors, unless the solicitations include a prominent disclaimer stating, ''This is an advertisement for services,'' and to refrain from using seals or logos that may be confused easily with those used by any federal government agency (§ 58.33(c)(4)—comment # B14).
- The rule has been amended to clarify that a provider must disclose its policy, if any, concerning fees associated with generating an instructional certificate prior to rendering any instructional services (§ 58.33(k)(1)—comment # B32).
- The rule has been amended to clarify that approved providers who publish information on the Internet concerning their fees must include their policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay. This is not an additional burden on providers as the proposed rule requires providers to disclose their fee polices prior to providing services; the final rule makes it clear that this requirement includes Internet based instruction (§ 58.33(k)(2)).
- The rule has been amended to clarify that a provider's duty to disclose its fee policy before providing services includes disclosing the provider's policy to provide free bilingual instruction to any limited English proficient debtor. This is not an additional burden on providers as the proposed rule requires providers to disclose their fee polices prior to providing services; the final rule makes it clear that this requirement includes disclosing providers' fee policies regarding services for limited English proficient individuals (§ 58.33(k)(3)).
- The rule has been amended to clarify that a provider's duty to maintain records regarding limited English proficiency debtors includes maintaining records regarding the methods of delivery of an instructional course, the types of languages and methods of delivery requested by debtors, the number of debtors served, and the number of referrals made to other providers. Because the proposed rule already requires providers to maintain records regarding the delivery of services to limited English proficiency individuals, this is not an additional burden in the final rule. Rather, the final rule makes clearer what is expected of providers in terms of record-keeping for limited English proficient individuals (§ 58.33(m)(3)).
- The rule has been amended to clarify that certificates must bear not only the date, but also the time and the time zone when the instructional course was completed by the debtor. This technical modification does not impose an additional burden as the proposed rule requires certificates to contain the date of completion and including the time and time zone is a minor modification to the date on the certificate (§ 58.35(l)(3)).
- The rule has been amended to correct non-substantive stylistic, numbering and typographical errors.

Discussion of Public Comments

EOUST received eleven comments on the proposed rule. Many of the comments contained several sub-comments. EOUST appreciates the comments and has considered each comment carefully. EOUST's responses to the comments are discussed below, either in the ''General Comments'' section or in the ''Section-by-Section Analysis.''

A. General Comments

1. Cost of the Rule to Providers

Comment: EOUST received several comments that the rule will make it more expensive for providers to operate and that they will pass the costs on to debtors.

Response: EOUST recognizes that the rule may cause providers to incur additional costs, but those costs are minimal. Additionally, the extra costs for such measures as procedures to verify a debtor's identity, and mandatory disclosure of the provider's fee policy, are sufficiently important to protect consumers to warrant the extra costs to the provider.

B. Comments on Specific Subsections of the Proposed Rule

1. Use of the Terms Accreditation and Certification [§ 58.25(b)(1) and (2)]

Comment: EOUST received one comment that the rule erroneously uses the terms accreditation and certification interchangeably, when accreditation refers to organizations and certification refers to individuals. One other comment recommended an amendment to section 58.25(b)(2)(i) to accommodate providers who certify other, unrelated, providers.

Response: EOUST has reviewed the rule carefully and found no instances in which accreditation was used to refer to individuals and certification was used to refer to organizations. In a few instances, a provider representative must sign a certification attesting to a particular fact or facts; these instances, however, do not use the term erroneously.

No change to the rule is necessary to permit providers to certify unrelated providers. Such a business practice is not permitted under the final rule.

2. Definition of Debtor [§§ 58.25(b)(8) and 58.33(n)(10)]

Comment: EOUST received one comment recommending limiting the restriction on sale of information about debtors to those debtors who have received instruction from a provider, not all persons who have contacted a provider (§ 58.33(n)(10)).

Response: Providers cannot provide services to debtors who never seek an instructional course. Thus, the definition of ''debtor'' has been revised to apply only to such debtors that have sought an instructional course from an approved provider. The restriction on selling information about debtors, however, applies with equal force to debtors who seek, but ultimately do not receive, instructional services from a particular provider.

3. Definition of Effective Instruction [§ 58.25(b)(10)]

Comment: EOUST received one comment seeking the incorporation of a separate standard that does not incorporate the criteria set forth in 11 U.S.C. 111(d)(2).

Response: EOUST has reviewed the statutory criteria, as incorporated in the definition, and has determined that the statutory criteria effectively set forth the standard for evaluating the quality of instruction.

4. Definition of Legal Advice [§§ 58.25(b)(20) and 58.33(b)]

Comment: One comment expressed concern about the rule's reference to 11 U.S.C. 110(e)(2) when defining legal advice. Because 11 U.S.C. 110(e)(2) includes bankruptcy procedures and rights, and because debtors may ask instructors bankruptcy-related questions during an instructional course, the comment expressed concern that the very act of instruction could cause instructors and providers to give ''legal advice'' in violation of the rule's prohibition.

Response: Because of the differences among the states concerning the definition of the unauthorized practice of law, and the resulting difficulty in defining ''legal advice,'' EOUST concluded the most appropriate approach is to adopt the definition

Congress provided in 11 U.S.C. 110(e)(2). EOUST is sensitive to the concern that an instructor's explanation of bankruptcy principles to debtors may be considered ''legal advice,'' but interprets 11 U.S.C. 110(e)(2) to mean that instructors shall not advise debtors concerning the application of bankruptcy laws, principles, or procedures to a particular individual's circumstances, and may not describe how bankruptcy laws, principles, or procedures would affect a particular individual's case. Rather, the instructor may explain basic bankruptcy principles and how such procedures are applied generally.

5. Definition of Limited English Proficiency [§ 58.25(b)(21)]

Comment: EOUST received four comments seeking revision of this definition to clarify its meaning.

Response: EOUST concurs that a technical modification is necessary and has revised the definition of the term to match that used by the Civil Rights Division of the Department of Justice, as set forth in Notice, Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR. 41,455 (June 18, 2002). Though the wording is slightly different, the meaning of limited English proficiency is essentially the same, i.e. individuals who do not speak English as their primary language or who have difficulty understanding English.

6. Definition of Material Change [§ 58.25(b)(22)]

Comment: Three comments stated that staff changes should be deleted from the definition of material change since the requirement is unnecessarily burdensome; one also sought to eliminate management from the definition of material change.

Response: EOUST agrees that this requirement may be overly burdensome, as it concerns staffing changes. Not every change in staff requires EOUST notification. The purpose of this requirement is to ensure that EOUST remains aware of changes in key personnel. Because the definition of ''material change'' already specifies notification for changes in management, the rule has been modified to change ''staffing'' to ''instructors'' and thereby reduce the burden on providers.

7. Definition of Referral Fees [§ 58.25(b)(26)]

Comment: One comment stated that the definition of referral fees contains a loophole that would allow an entity to charge a referral fee merely by calling it something else.

Response: EOUST has deleted the definition of ''locator,'' eliminating any concerns that a loophole exists in the definition of referral fees. The revised definition of ''referral fees'' prohibits the transfer or passage of any money or other consideration between a provider and another entity as consideration or in exchange for the referral of clients for instructional services.

8. Definition of Relative [§ 58.25(b)(27)]

Comment: EOUST received one comment requesting that the definition of ''relative'' be limited to the second degree of consanguinity.

Response: No change is necessary. The requirement does not impose a material burden on providers necessitating a change to the rule.

9. Mandatory Duty To Notify—Material Change [§ 58.30(a)]

Comment: One comment objected to the need to inform EOUST promptly of material changes, proposing that monthly notification is sufficient.

Response: No change is necessary. Because the material changes requiring notice to EOUST are specific and involve matters of public interest and consumer protection, such as cessation of the provider's business, revocation of a provider's articles of incorporation, or suspension of accreditation, EOUST requires immediate notice.

10. Mandatory Duty To Notify—Consumer Litigation [§ 58.30(c)]

Comment: One comment observed that, although 11 U.S.C. 111(g)(2) confers a private right of action against nonprofit budget and credit counseling agencies who violate section 111, the proposed rule does not require providers to notify EOUST of such actions. The comment suggested an additional mandatory disclosure to EOUST requiring affirmative notification of actions pursuant to 11 U.S.C. 111(g)(2) or other consumer protection statutes.

Response: The proposed change would enhance consumer protection by providing EOUST with information concerning private litigation based on consumer protection statutes and government enforcement actions. EOUST will publish a notice of proposed rulemaking to solicit public comments regarding whether EOUST should require notification of such actions.

11. Mandatory Duty To Notify—Inaccurate Information [§ 58.30(e)]

Comment: One comment objected to the requirement that a provider notify EOUST of inaccuracies on the list of approved providers. The comment suggested that, because EOUST possesses the information that comprises the approved list, placing the burden of notification on the provider is inappropriate.

Response: A provider is in the best position to recognize whether the information about the provider posted on the list of approved providers is accurate. Accordingly, the duty to notify EOUST of any inaccuracies necessarily rests with the provider. Although EOUST corrects inaccuracies of which it becomes aware internally or from other outside sources, to the extent the provider is aware of inaccurate information, the provider must notify EOUST. No change to the rule is necessary.

12. Duty To Obtain Prior Consent [§ 58.31(a)]

Comment: One comment objected to the requirement that a provider seek approval of any listed changes other than the engagement of an independent contractor. The comment recommended simple notice for other listed changes.

Response: Because the list of approved providers constitutes EOUST's principal means of conveying information to the public, and because debtors and debtors' counsel rely on the list of approved providers to locate providers in their judicial districts who provide instruction by the various methods, providers must notify EOUST of any proposed changes to judicial districts or methods of delivery. Furthermore, because United States Trustees require notice and the opportunity to comment on a provider's fitness to provide instruction in a judicial district, simple notice is inadequate. Finally, as discussed below concerning sections 58.34(a) and 58.34(b), because fees in excess of $50 per debtor are not presumed to be reasonable, and because 11 U.S.C. 111(d)(1)(E) requires providers who charge a fee to provide services without regard to the debtor's ability to pay the fee, EOUST must approve changes to a provider's fee and fee waiver policy in advance. Accordingly, no change to this rule is necessary.

13. Criteria To Become Approved Providers [§§ 58.32 and 58.33(f)]

Comment: EOUST received one comment recommending that instructional curricula should include

bankruptcy-specific content to address the specific hurdles debtors face upon emerging from bankruptcy.

Response: The detailed substantive curriculum requirements in section 58.33(f) mandate debtor education spanning a broad range of financial matters, including budgeting, financial management, credit, consumer information, and coping with financial crisis. The elements of the curriculum address the areas of greatest concern to consumers without posing undue risk that providers and their instructors will provide legal advice concerning bankruptcy or financial regulation to debtors. As noted elsewhere, EOUST interprets 11 U.S.C. 110(e)(2) to permit instructors to explain basic bankruptcy principles and procedures and their general application; such matters may form part of the required debtor education curriculum.

14. Restrictions on Advertising [§ 58.33(c)(4)]

Comment: One comment advocated including two additional ethical rules concerning direct mail and telephone advertising. The first would bar providers from contacting debtors via outbound telephone calls, unless the provider already has provided instructional services to the debtor in question, and the call is in response to a request for contact by the debtor or debtor's counsel, either directly or through a contact form or locator service. The second would bar providers from using direct mail or electronic mail solicitations to contact debtors, unless the solicitations include a prominent disclaimer stating, ''This is an advertisement for services,'' refrain from using seals or logos that may be confused easily with those used by any federal government agency, do not include certain words (such as ''trustee'' or ''bankruptcy court''), and the solicitation is in response to a request for contact by the debtor or debtor's counsel, either directly or through a contact form or locator service.

Response: EOUST acknowledges that some restrictions on advertising and solicitation are necessary to protect consumers. However, the first proposed restriction, which prohibits providers from contacting debtors unless the debtor initiates the contact after the instructional course, forecloses a substantial body of contact between debtors and providers. Such a limitation may be more restrictive of commercial speech than is necessary to advance the government's interest in consumer protection.

EOUST concurs with the second proposed restriction. Some types of mail solicitations from providers to recently-filed debtors may be confused with bankruptcy court correspondence, as they bear barcodes, case numbers, and other misleading markings, and, on at least one occasion, bear the words ''Bankruptcy Court'' on the envelope. Accordingly, the requirements that mail solicitations bear a prominent disclaimer and include only logos, seals, or similar marks that are substantially dissimilar to those used by federal agencies and courts constitute reasonable restrictions on advertising. These restrictions minimize consumer deception arising from the false impression that the solicitation constitutes an official court or United States Trustee Program communication. These restrictions are narrowly tailored to advance the government's interest in consumer protection and are consistent with First Amendment principles governing commercial speech. *See, e.g., Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n,* 447 U.S. 557 (1980) (holding that restrictions on commercial speech must directly advance an important interest and shall be no more restrictive of speech than necessary and recognizing the constitutionality of regulations restricting deceptive advertising).

Furthermore, the restrictions on advertising are not an additional burden on providers as the proposed rule requires providers to ''comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in appendix A to the application'' (§ 58.33(n)(7) of the proposed rule). In that appendix, it states that approved providers shall not use the Department of Justice's seal, the United States Trustee's seal, the Bankruptcy Court's seal, or any seal of the United States or a likeness thereof. Providers have been aware of this prohibition since the inception of the debtor education application in 2005. The final rule clarifies the contours of this restriction on advertising.

15. Instructor Qualifications [§ 58.33(d)(1)]

Comment: One comment objected to the requirement that instructors, rather than the provider, hold specific qualifications. The comment suggested that the listed requirements should apply to the provider as an entity, rather than to individual instructors. Another comment recommended imposing an additional requirement that instructors receive credit counseling-specific training before initial certification and be required to receive annual continuing education.

Response: The instructor qualification requirements are meant to ensure that each instructor possesses sufficient expertise in financial matters to provide substantive instruction to consumers. Accordingly, inexperienced instructors either must complete a financial course of study or must work a minimum of six months in a related area to ensure they are qualified to serve as instructors. Based upon experience administering the Interim Final Rule and its interactions with providers, EOUST concluded the requirements set forth in this rule are sufficient to ensure that instructors will be qualified to provide the statutorily mandated instruction to debtors. Accordingly, no change to the rule is necessary.

16. Verification of Identity [§ 58.33(d)(3) and (e)(2)]

Comment: EOUST received comments concerning identity verification. One expressed the opinion that verification of debtor identity in the context of Internet and telephone instruction is impossible, and another sought further guidance concerning the appropriate means of identity verification.

Response: Establishing an individual's identity in the context of telephone and Internet instruction may pose difficulties. This does not, however, obviate identity verification requirements. Indeed, many providers already have implemented effective identity verification procedures. For in-person instruction, an individual may present his or her driver's license, or similar photo identification, to establish his or her identity. Because the instructor is physically present and can confirm that the photo in the driver's license matches the debtor, this identification procedure is sufficient for in-person instruction. In the case of Internet and telephone instruction the individual is not in the instructor's physical presence and additional measures are necessary to confirm the individual's identity. In such cases, providers successfully have requested that debtors supply their mothers' maiden names, or other information known specifically to the individual debtors, to confirm identity.

17. Learning Materials and Methodologies [§ 58.33(f) and (g)]

Comment: One comment recommended that the rule incorporate the National Standards for Adult Financial Literacy Education, established by the commenter, as the substantive standard for personal financial instruction. The commenter also recommended a clarification that

''learning materials'' should be ''written learning materials.''

Response: No change to the rule is necessary. EOUST declines to adopt standards established by one source as the substantive standard for instruction by all providers.

18. Course Procedures—Length of Time [§ 58.33(g)(1)(i)]

Comment: EOUST received one comment that requiring ''a minimum'' of two hours for an instructional course emphasizes the time actually spent in class rather than the topics covered and the knowledge transferred to the debtor. The commenter suggested replacing the word ''minimum'' with ''approximately.''

Response: No change is necessary. Based upon experience administering the Interim Final Rule and its interactions with providers, EOUST has determined that two hours, at a minimum, are necessary to cover all the substantive topics set forth in 11 U.S.C. § 111(d)(1) and 28 CFR § 58.33(f).

19. Course Procedures—When Course Is ''Complete'' [§ 58.33(g)]

Comment: One comment sought clarification about when Internet instruction is ''complete'' and suggested that completion should be defined specifically. The comment noted that, in the case of Internet instruction, providers and debtors are uncertain whether instruction is considered complete when the debtor finishes the online course, or whether further interaction with an instructor is necessary.

Response: Unlike budget and credit counseling, which, by statute, require client-specific counseling with respect to credit and financial problems and development of a plan to address each individual client's financial problems, post-bankruptcy personal financial management instruction does not require individualized counseling and the development of a personalized plan. Accordingly, the instruction is ''complete'' (1) when the debtor has finished an instructional course that complies with the provisions of 11 U.S.C. 111(d) and the other provisions of this rule, and that EOUST has approved; (2) after the debtor has established his or her identity as described in this rule; and (3) after the debtor has taken any test required by the provider, and if the debtor failed to obtain at least a 70 percent passing grade, received follow-up instruction from the provider; the scope of the follow-up instruction is left to the discretion of the provider.

20. Course Procedures—Telephonically Present [§ 58.33(g)(3)(i)]

Comment: One comment sought clarification regarding the meaning of the term ''present'' for telephone-based courses.

Response: The requirement that an instructor is telephonically present to instruct and interact with debtors does not require the instructor to provide live course instruction on the telephone, but requires that the instructor be present to respond to debtor inquiries.

21. Course Procedures—Internet Providers [§ 58.33(g)(4)(i)]

Comment: One comment objected to the application of § 58.33(g)(3)(v) to Internet course providers, noting that it does not obtain telephone numbers from its Internet clients.

Response: To the extent instruction takes place by Internet, the provider may satisfy this requirement by providing direct communication from an instructor by electronic mail, live chat, or telephone.

22. Special Needs [§ 58.33(j)]

Comment: One comment stated that ''special needs'' should be a defined term.

Response: The term ''special needs'' is in the public vernacular and commonly refers to people with disabilities. No further clarification is necessary.

23. Mandatory Disclosures [§ 58.33(k)]

Comment: EOUST received several comments concerning the number of mandatory disclosures. One comment stated that the number of mandatory disclosures is excessive and should be reduced to avoid confusing debtors; the comment suggested deleting paragraphs 58.33(k)(4) and (5) as unnecessary, and allowing paragraphs (6) and (9) to be given during the instructional session rather than before, at the instructor's discretion.

EOUST also received a comment recommending that, to the extent a provider also is approved as a nonprofit budget and credit counseling agency pursuant to 11 U.S.C. 111(c), the provider be able to state that the United States Trustee has reviewed those services.

Response: While EOUST recognizes that the disclosures are numerous, they are necessary to protect consumers. Paragraphs (4) and (5) provide debtors with essential information concerning the qualifications of the course instructor and inform debtors who otherwise may be unaware that providers may not charge or receive referral fees. These disclosures allow debtors to make informed decisions concerning the choice of provider by giving debtors complete information before they engage the provider. Paragraphs (6) and (9) inform consumers that the provider must provide a certificate promptly and the certificate will be provided only if the consumer completes the instruction. These disclosures are particularly important to eliminate misunderstandings between the provider and debtor and make clear to debtors that they must complete instruction before receiving a certificate.

Though the proposed rule did not prohibit providers from informing debtors that they were, if applicable, also approved credit counseling agencies, the rule did not expressly allow it either. To reduce a restriction on providers, paragraph (k)(8) has been revised to permit a provider to disclose that, to the extent that provider is also approved as a nonprofit budget and credit counseling agency pursuant to 11 U.S.C. 111(c), the United States Trustee has reviewed those credit counseling services.

24. Recordkeeping Requirements [§ 58.33(m)]

Comment: EOUST received several comments concerning recordkeeping requirements. A number of comments objected that the recordkeeping requirement was burdensome. One objected to the requirement in section 58.33(m)(3) that Internet instructional course providers assess the language debtors use in daily life. Another comment objected to the requirement that providers maintain records concerning the provision of free or reduced-fee services on a voluntary basis.

Response: Certain recordkeeping requirements, such as the requirement to maintain records concerning the numbers of debtors who seek instruction in languages other than English, are necessary to advance the underlying purpose of the statute and to assist EOUST in ensuring that instructional services are available to the broadest range of consumers. Accordingly, the final rule retains most recordkeeping requirements regarding all debtors but has limited this requirement concerning prohibiting bundling or tying agreements as to debtors who seek but ultimately do not receive instructional services from a particular provider. In those instances, the broad reference to ''debtors'' does not advance a legitimate regulatory objective. Accordingly, the definition of ''debtors'' has been revised to conform to 11 U.S.C. 101(13), to the extent that the individual has sought an

instructional course from an approved provider.

The requirement that providers retain hard copies of signed certificates for two years has been deleted. The final rule no longer requires providers to provide original signatures on certificates in recognition of electronic filing in the bankruptcy courts and the technology used to generate certificates. Copies of such certificates shall be retained for 180 days from the date of issuance.

25. Additional Minimum Requirements [§ 58.33(n)(5)]

Comment: Two comments regarding provider obligations objected to the rule's requirement that providers take no action to limit debtors from bringing claims against providers ''under any applicable law, including but not limited to 11 U.S.C. § 111(g)(2).'' The comment expressed the opinion that the phrase ''any applicable law'' exceeds the scope of 11 U.S.C. § 111(g)(2).

Response: To reduce the burden on providers, the rule has been amended to strike the reference to ''any applicable law.''

26. Advertising [§ 58.33(n)(7) and (n)(9)]

Comment: EOUST received one comment suggesting that the phrase ''approval does not endorse or assure the quality of a Provider's services'' should be deleted. The comment claimed advertising is protected speech and that the quoted phrase raises doubts in the mind of the consumer concerning the meaning of approval. The comment also objected to the restrictions on commercial advertising during the instructional course on First Amendment grounds.

Response: This disclaimer is necessary to inform consumers that, although the provider is approved to issue instructional course certificates, such approval does not constitute a government guarantee or endorsement of the quality of the provider's services. This disclaimer protects consumers who otherwise might infer that approval means all provider actions automatically carry the approval or endorsement of the federal government. In addition, after obtaining approval, a provider may change its business practices or employ unqualified instructors, and EOUST may not learn of these changes in quality immediately. Finally, advertising constitutes commercial speech and is subject to regulations that directly advance a substantial governmental interest, provided there exists a reasonable fit between the regulations and the governmental interest. As EOUST has a substantial interest in ensuring that the public is not misled regarding the meaning of provider approval, and as the disclaimer is narrowly tailored to advance EOUST's interest without otherwise controlling or otherwise limiting the content of a provider's advertisements, the disclaimer is reasonable.

For the same reasons, the limitation on commercial advertising during the instructional course constitutes a reasonable time, place, and manner restriction on speech.

27. Fees [§ 58.34(a)]

Comment: EOUST received numerous comments regarding the determination of reasonable fees. Comments spanned suggestions for the dollar amount of a reasonable fee, ranging from $60 to $100, to suggestions that the proposed $50 reasonable fee is unreasonable and should be adjusted for regional variations. A number of comments stated that the establishment of a fixed reasonable fee runs afoul of the market economy, and that competition will keep fees low while taking regional variations and cost changes into account. One comment expressed the concern that the proposed reasonable fee and fee waiver requirements would render it unable to cover the costs of providing instruction.

Response: EOUST has considered carefully the comments concerning both the amount of a reasonable fee and the policies underlying the establishment of a fixed fee, both in the context of the policies underlying the statute and the experiences of approved providers since passage of the Interim Final Rule, and has determined: (a) Fees in excess of $50 per person are not presumptively reasonable; (b) EOUST shall review the amount of the presumptively reasonable fee one year after the effective date of the rule, and then periodically, but not less frequently than every four years; (c) providers may request permission to charge a larger fee, which EOUST will consider on a case-by-case basis; and (d) whether a provider charges fees for an instructional session per individual or per couple is within the business discretion of the provider.

EOUST acknowledges that local variations in income, cost of living, overhead, inflation, and other factors may influence and lead to inter-provider differences in determining the reasonableness of instructional course fees. However, based on EOUST's experience with approved providers, the $50 presumptively reasonable fee adequately incorporates the costs associated with complying with the statute and rule, taking into account the increasing prevalence of telephone and Internet instruction, both of which have lower costs than in-person instruction, and the prevalence of group instruction in the post-bankruptcy course setting. The rule permits providers to exceed the presumptively reasonable fee after receiving approval from EOUST by demonstrating, at a minimum, that its costs for delivering the instructional services justify the requested fee. The provider bears the burden of establishing that its proposed fee is reasonable. Such requests may occur at the time of the provider's annual re-application for approval to provide instructional services, or at any other time the provider deems necessary. Providers that have previously submitted requests to charge more than $50, and have been granted permission to do so, will not be required to resubmit such requests if the provider continues to charge that fee in the same amount. Of course, any new requests must be submitted to EOUST for approval.

28. Fee Waivers [§ 58.34(b)]

Comment: EOUST received numerous comments concerning the requirement that providers offer instructional services at a reduced cost, or waive the fee entirely, for debtors who are financially unable to pay. The proposed rule requires providers to waive or reduce fees for debtors whose income is less than 150 percent of the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination (the ''poverty level'').

While one comment expressed concern that the association between the poverty level and the determination of a debtor's ability to pay necessitated further study and assessment of financial impact on the providers, one comment objected to the use of 150 percent of the poverty level as a mandatory fee waiver requirement and suggested that 100 percent of the poverty level was appropriate. Another comment suggested permitting or implementing a schedule of discounts for debtors whose incomes fall below the poverty level, but who can afford to pay some amount, while yet another comment suggested not only that a debtor should bear the burden of demonstrating inability to pay, but that a debtor should affirmatively request the fee waiver.

Response: Based on these comments and EOUST's existing fee waiver data, EOUST has revised the rule to reduce

the burden on providers while still maintaining adequate protection for debtors. EOUST acknowledges that standardization may not take into account local differences, and may have a disparate impact on providers located in geographic areas of concentrated low income. Although a provider may apply to EOUST to increase its instructional fee, such fee increases ultimately shift the fee burden to those debtors more able to pay.

Furthermore, a mandatory fee waiver for debtors with income at below 150 percent of the poverty level likely would result in a substantial increase in the number of fee waivers granted. Although some commentators urged EOUST to adopt rigid criteria requiring providers to offer services without charge, such an inflexible rule would be inconsistent with similar court practices concerning waiver of court filing fees for *in forma pauperis* debtors that do not require the wholesale waiver of filing fees for all debtors with incomes below a certain income level. Under BAPCPA, debtors earning less than 150 percent of the poverty level are eligible to apply for a waiver of the court filing fee and the court determines whether an eligible debtor has the ability to pay the filing fee. Not all debtors who are eligible for a waiver of the filing fee apply, and not all debtors who apply are eligible. Fewer than two percent of debtors ultimately obtain a waiver of court filing fees. In comparison, based on available data from 2005, approximately 30 percent of chapter 7 debtors are eligible to apply for a waiver of the court filing fee. If EOUST were to require providers to adopt a mandatory fee waiver policy with respect to all such debtors, some providers could suffer severe financial losses that would render them unable to provide services, reducing capacity to serve the overall debtor population. As of July 2009, according to self-reporting by approved debtor education providers, without the proposed mandatory fee waiver, 12.2 percent of certificates were issued at no cost, with another 13.9 percent issued at reduced cost.

In response to these concerns, EOUST has adopted a rebuttable presumption of a mandatory fee waiver or fee reduction policy for debtors whose income is less than the poverty level, based on the *in forma pauperis* standard set forth in 28 U.S.C. § 1930(f)(1). Under this rebuttable presumption policy, instead of waiving the fee entirely, a provider may charge a debtor a reduced fee if the provider determines that the debtor does, in fact, have the ability to pay some of the fee; the amount may be determined using a sliding scale, of the provider's design, that takes into account the debtor's financial circumstances. If the provider determines that the debtor has the ability to pay some of the fee, there is no minimum amount by which the provider should reduce the fee; the amount of fee reduction is entirely dependent upon the debtor's ability to pay as determined by the debtor's financial circumstances. This rebuttable presumption satisfies the statutory mandate that instructional services be provided without regard to a debtor's ability to pay the fee while taking into account the provider's need to generate sufficient income from fees to cover operational costs. Accordingly, this policy establishes a uniform, objective standard by which providers, debtors, and EOUST can evaluate debtor entitlement to a fee waiver or a fee reduction depending on each particular debtor's ability to pay. The provider makes the determination of whether to grant the fee waiver or fee reduction when the provider provides instruction to the debtor; the provider need not consult with EOUST before making its determination. EOUST will review a provider's fee waiver policies and statistics during the provider's annual review or during a quality of service review. Finally, because the poverty level is updated periodically and takes into account the debtor's household size, this policy accounts for nationwide changes in the cost of living over time.

Establishing a presumptively mandatory but rebuttable fee waiver or fee reduction policy for debtors whose household income falls below 150 percent of the poverty level recognizes providers' need to generate sufficient income from fees to cover operational costs in light of the statutory mandate. To the extent a provider believes the fee waiver policy set forth in the rule adversely impacts its financial viability, the provider may apply to EOUST to increase its fee. The provider shall demonstrate that its costs of delivering instructional services (including opportunity costs associated with waived or foregone fees) justify the proposed fee. The rates of both full and partial fee waivers based on debtor income levels, and the mechanisms by which providers implement the rebuttable presumption, are subject to EOUST scrutiny during the annual application review for each approved provider and during quality of service reviews to assess compliance with 11 U.S.C. 111 and this final rule.

To permit EOUST to periodically evaluate the cost and business impact of this mandatory fee waiver policy on debtors and providers, and determine whether providers are applying the mandatory fee waiver policy uniformly and fairly, the rule has been amended to add a new section, § 58.34(b)(2), requiring the United States Trustee to review the basis for the mandatory fee waiver policy one year after the effective date of the rule, and then periodically, but not less frequently than every four years. When reviewing the basis for the mandatory fee waiver or fee reduction policy, EOUST may consider the impact on both providers and debtors by evaluating data from providers concerning the instructional fees, increases to such fees, and rates of total and partial fee waiver. By retaining the mandatory, objective fee waiver policy but requiring its periodic review, EOUST advances the statutory mandate that instructional services be provided without regard to the debtor's ability to pay, while enabling EOUST to revisit the objective standard in light of provider operational costs and impact on debtors. The reasonableness of provider determinations will continue to be subject to EOUST oversight during the application process, during on-site reviews, and in the course of resolving specific complaints.

29. Certificates—Bundling [§ 58.34(d)]

Comment: One comment recommended revising this provision to permit providers who also offer credit counseling to offer a discount to credit counseling clients who return to the provider for post-bankruptcy instruction. The comment recommended new language to read, ''A provider shall not combine a debtor's purchase of an instructional course with the purchase of any other service offered by the provider.''

Response: EOUST does not prohibit the practice of discounting post-bankruptcy instructional course fees for credit counseling clients who return to take the instructional course as long as the provider does not require the client to purchase both courses. The rule's prohibition against linking services does not prohibit credit counseling agencies from offering a discount to debtors who wish to return for post-bankruptcy instruction. No change to the rule is necessary.

30. Delivery of Certificates—to Whom [§ 58.35(a)]

Comment: EOUST received several comments concerning delivery of certificates to a debtor's attorney. The proposed rule required a debtor to authorize, in writing, the delivery of the instructional certificate to the debtor's attorney. The comments expressed the opinion that requiring a debtor to provide written consent to a provider is

inefficient, particularly when the debtor receives instruction by telephone or Internet. In such instances, the comments stated, mail transmission of written consent to a provider delays the delivery of the certificate. Rather than requiring written consent, the rule should permit the debtor to authorize verbally the provider to send the certificate to the debtor's attorney.

Response: EOUST agrees that written consent to deliver a certificate to a debtor's attorney is unnecessary and unduly impedes the efficiency of telephone and Internet instruction. Accordingly, the rule has been revised to permit verbal authorization to send a certificate to a debtor's attorney. In the case of Internet instruction, electronic mail authorization or an electronic affirmation (such as a radio button or a box on a Web page) is sufficient.

31. Delivery of Certificates—Time [§ 58.35(b)]

Comment: Several comments objected to the requirement that a provider deliver the certificate to a debtor within three business days of completion of the instructional course. One comment suggested that the rule specify that ''delivery'' means transmission, not receipt.

Response: The requirement that a provider send the certificate to a debtor within three business days accords the provider adequate time and is commercially reasonable. The term ''deliver'' has been changed to ''send'' to encompass a wide range of transmission methods. To the extent a provider is unable to send the certificate within the specified time because of extenuating circumstances, such as problems with generating or printing the certificate, illness of the instructor, or other circumstances beyond the provider's control, EOUST can evaluate such incidents on a case-by-case basis.

32. Certificates—Fees [§§ 58.33(k)(1) and 58.35]

Comment: Several comments objected to permitting providers to charge separate fees for certificates; other comments sought clarification concerning the type of consent providers must obtain before charging additional fees for certificates. One comment sought clarification in the case of telephone and Internet instruction, and suggested that clients be able to consent verbally or electronically in such cases.

Response: EOUST concludes that the rule should not have specific instructions for circumstances that arise infrequently as most providers do not charge a separate fee for the issuance of the certificate. Accordingly, the rule has been amended to strike the specific and additional instructions for providers that charge separate fees for certificates. Instead, the final rule requires the general disclosures to include disclosure of *all* fees, including any additional fees for certificates. This is not an additional burden on providers as the proposed rule, and Interim Final Rule, already require providers to disclose their fee policy before rendering services.

33. Certificates—Issuance [§ 58.35(h)]

Comment: One comment objected to the proposed rule on the grounds that certificate issuance is a purely administrative function, and entities operating under the authority of an approved provider, in addition to providers, should be permitted to issue certificates.

Response: The certificate avers that the instructor has provided the represented instruction to the debtor. Accordingly, the requirement that only approved providers generate certificates, and not subsidiary or related but unapproved entities, serves quality control and consumer protection functions. Accordingly, no change to the rule is necessary.

34. Certificates—Original Signature [§ 58.35(j)(2)]

Comment: Several comments objected to the requirement that certificates generated for electronic filing must be generated in paper form as well and must bear the original signature of the instructor. The comments criticized the requirement as expensive and time-consuming, and noted that the rule contains precautions against creation of forged or fraudulent certificates.

Response: EOUST agrees and has reduced the burden on providers by deleting the requirement that, when a certificate is generated for electronic filing with the court, the provider must provide the debtor a paper certificate bearing the instructor's original signature as well.

35. Certificates—Information [§ 58.35(*l*)]

Comment: Two comments sought revisions concerning information on the certificate. One comment recommended a revision to the rule specifically authorizing providers to verify the judicial district in which the debtor's bankruptcy case is pending via PACER or other court records, to minimize debtor error. Another comment objected to the requirement that the certificate bear the instructor's name.

Response: No change to the rule is necessary. Nothing in the rule or 11 U.S.C. 111(d) prohibits instructors or providers from accessing public records, to the extent authorized, to verify the judicial district in which the debtor's bankruptcy case is pending, or from requesting that debtors bring a copy of a court document to the instructional course. Furthermore, the requirement that the certificate bear the instructor's name is necessary to permit EOUST to confirm the quality of instruction by a particular instructor.

36. Certificates—Legal Name [§ 58.35(m)]

Comment: EOUST received several comments concerning the display of two names on the certificate when a third party (such as an attorney-in-fact acting under a valid power of attorney) completes instruction on behalf of the debtor. The comments expressed doubt that a certificate can display two names rather than one. Several comments expressed the opinion that, rather than leaving open the possibility that a third party can complete the course on behalf of the debtor under certain circumstances, the rule expressly should prohibit third parties from taking instruction on behalf of debtors.

EOUST also received one comment recommending an amendment to the rule permitting the provider to ''affix debtor's name as it appears on debtor's bankruptcy filing.''

Response: Certificates may display more than one name (e.g., John Doe, as Attorney-In-Fact for Jane Doe). No clarification is necessary to permit such a display, and the display of both names removes the need for providers to engage in legal analysis concerning the proper party to list on the certificate, while providing full disclosure to courts and other parties concerning the debtor's participation in instruction. Furthermore, EOUST declines to prohibit third parties from completing instruction on behalf of a debtor under appropriate circumstances, such as under a valid power of attorney sufficient to authorize the individual to file a bankruptcy petition on behalf of a client. To the extent state law authorizes powers of attorney, EOUST does not object to the completion of instruction by duly authorized attorneys-in-fact on behalf of debtors.

No change to the rule is necessary to permit providers to affix a debtor's name as it appears on the debtor's bankruptcy filing. The debtor bears the burden of providing the provider with the proper name.

37. Appeals [§ 58.36]

Comment: One comment sought clarification concerning several aspects

of the appeal process. First, the comment requested inclusion of a specific statement that interim directives removing a provider from the approved list are rare and should be used only in extraordinary circumstances. Second, the comment also requested clarification that the appeal period begins to run upon the provider's receipt of the United States Trustee's removal decision, rather than from the date the United States Trustee made the decision. Finally, the comment sought to limit the authority of the Director to extend its review period due to exigent circumstances.

Response: No change to the rule is necessary. First, by their nature, the specifically enumerated circumstances permitting interim directives ensure that only in limited circumstances will the United States Trustee remove a provider from the approved list pursuant to the interim directive procedure. Second, the rule provides that, to be timely, appeal documents shall be received not later than 21 calendar days from the date of the notice to the provider. The rule is unambiguous. The Director shall receive the documents within 21 calendar days of the date of the notice, even if the provider does not have 21 calendar days to respond. The rule also requires the United States Trustee to deliver removal documents to the provider by overnight courier to avoid loss of time and prejudice to the provider. Finally, the Director will generally not extend the deadline to issue a final decision unless the provider agrees to the extension of time. However, there may be circumstances where the Director needs to extend the deadline but the provider unreasonably declines to extend the deadline. In such instances, the Director must have the authority to extend the deadline to ensure that a thorough and fair consideration of the provider's request for review has occurred before issuing a final decision.

38. Appeals—Return of Client Fees [§ 58.36(q)(3)]

Comment: One comment recommended extending the time for providers removed from the list of approved providers to explain why they require additional time to complete refunds to debtors. The comment also recommended changing the criteria for debtors eligible to receive a return of fees to those who had ''substantially'' received instruction, rather than those who had ''completely'' received instruction.

Response: No change to the rule is necessary. EOUST will consider prompt and reasonable requests for extension of time and the rule already provides for the return of fees for anyone who has paid for services but not received them.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation. The Department has determined that this rule is a ''significant regulatory action'' and, accordingly, this rule has been reviewed by the Office of Management and Budget (''OMB'').

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the required costs for the submission of an application. Costs considered also include the cost of establishing and maintaining the approved list in each federal judicial district. In an effort to minimize the burden on applicants, the application keeps the number of items on the application to a minimum.

The costs to an applicant of submitting an application will be minimal. The anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications. Based upon the available information, experience with the instructional course industry, and informal communications with providers, EOUST anticipates that this cost for submitting an application should equal approximately $500 per application for providers. This cost is not new. It is the same cost that providers incurred when applying under the Interim Final Rule.

Although providers may charge a fee for providing the financial management instructional course, providers must provide the instructional course without regard to a debtor's ability to pay the fee in accordance with 11 U.S.C. 111(d)(1)(E). Based upon the available information, current practice of many providers, experience with the instructional course industry, and informal communications with providers, $50 is presumed to be a reasonable fee for an instructional course. This rule does not prevent providers from charging more than $50. It requires providers to notify EOUST of any additional charge prior to implementing the additional fee and justify the additional cost to obtain EOUST approval for the increased fee.

The amount presumed to be reasonable for instructional course fees will be reviewed one year after the effective date of this rule, and then periodically, but not less frequently than every four years. The amount presumed to be reasonable will be published by notice in the **Federal Register** and identified on the EOUST Web site. In addition, all providers must waive or reduce the fee if the debtor demonstrates a lack of ability to pay the fee, which shall be presumed if the debtor's current household income is less than 150 percent of the poverty level, as adjusted from time to time, for a household or family of the size involved in the fee determination. A provider may rebut this presumption if the provider determines, based on financial information provided by the debtor in connection with instructional services, that the debtor is able to pay the fee in a reduced amount. Please refer to the Regulatory Flexibility Act section for a discussion on fees, fee waivers and fee reductions.

Additionally, providers will incur *de minimus* recordkeeping costs. For instance, a provider will be required to maintain various records, such as records on which it relied in submitting its application; copies of the semi-annual reports; records on instruction provided in languages other than English; fees, fee waiver and fee reduction statistics; complaints; and records enabling the provider to issue replacement certificates. All of these records combined should not equal more than a few pages or megabytes of information. Moreover, the increased specificity in this rule regarding records retention requirements reduce the burden on providers because the Interim Final Rule required providers to maintain records, but did not specify which records needed to be kept, nor for how long. With implementation of this rule, providers no longer need to keep every record for an unspecified amount of time in case such records are requested during an annual review or quality of service review.

The number of applicants that will ultimately apply is unknown, though EOUST currently has approved approximately 270 providers. The annual hour burden on providers is estimated to be ten hours. This estimate is based on consultations with individuals in the instructional course industry, and experience with providers who completed the initial applications. EOUST consulted with the Federal Trade Commission and with the Internal Revenue Service in drafting this rule and concludes that the rule does not have an adverse effect upon either agency.

The benefits of this rule include the development of standards that increase

consumer protections, such as a limit on the presumption of reasonable fees, and the requirement that providers give adequate disclosures concerning providers' policies. These disclosures include notifying debtors that they may qualify for reduced or free services to further the BAPCPA's requirement that services be provided without regard to ability to pay the fee. This rule also provides for greater supervision by the United States Trustee to ensure providers deliver effective instruction to debtors concerning personal financial management. Additionally, this rule assists in reducing fraud by requiring providers to identify debtors before providing an instructional course and corresponding certificate of completion. Another benefit of this rule is clarifying that providers who cannot provide instruction in the debtor's language shall expeditiously direct the debtor to a provider who can provide services in the debtor's language. These benefits justify the rule's costs in complying with Congress' mandate that a list of approved providers be established. Public Law 109–8, § 106(e)(1).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 to 3520, and assigned OMB control number 1105–0085 for form EOUST–DE1, the ''*Application for Approval as a Provider of a Personal Financial Management Instructional Course.''* The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process, and that the application and associated requirements were modified to take into account the concerns of those who commented in this process.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Director has reviewed this rule and, by approving it, certifies that although it will affect a substantial number of small entities, the rule will not have a significant economic impact upon them.

This rule sets forth guidance concerning the reasonable fee a provider may charge (a presumptively reasonable fee of $50), and the criteria for determining fee waiver eligibility (presumed eligibility at household income of 150 percent of the poverty level). EOUST sought to establish formal guidance concerning fees, fee waivers and fee reductions based on a debtor's ''ability to pay the fee'' using objective criteria, taking into account the potential financial impact on the agencies as well as the needs of clients. 11 U.S.C. 111(d)(1)(E).

After carefully evaluating the financial management instructional course industry, EOUST based its fee guidance on current industry practice. Over 90 percent of approved providers charge $50 or less. According to a U.S. Government Accountability Office (''GAO'') report in 2007, the mean fee for providers among all providers was $43. *See* U.S. Gov't Accountability Office, GAO–07–203, Bankruptcy Reform: Value of Credit Counseling Requirement is Not Clear 30 (2007) (the ''GAO Report''). As of 2011, the mean fee for providers among all providers is $42. Among the ten largest providers (by certificate volume), nearly all charge $50 or less in fees. Only two of the ten largest providers charge more than $50 (one of the providers in question charges $50, but increases the fee to $75 for telephone instruction; the other provider charges $55, but increases the fee to $59 for telephone instruction). Four of the ten largest providers charge substantially less than $50: one charges $25; one charges $24; one charges $19; and the other charges $14.95. According to EOUST records, fee policies have not changed among the ten largest providers since 2006.

In 2011, EOUST took a random sampling of ten providers that were not among the ten largest providers to determine these providers' fees. Of these ten providers, one charges $50; one charges $40; one charges $37.50; one charges $35; four charge $25; one charges $9; and one is free of charge. Accordingly, a $50 presumptively reasonable fee not only strikes an appropriate balance between the financial condition of debtors and the financial viability of approved providers, but is generally equivalent to the general practice in the debtor education industry. Thus, establishing a presumptively reasonable fee of $50 does not impose a significant economic impact on providers. Rather, it embodies a fee structure that encompasses that already widespread in the industry.

Regarding fee waivers, similar to the requirement to charge ''reasonable'' fees, the requirement to waive fees when a client cannot pay is mandated by statute. 11 U.S.C. 111(d)(1)(E). With respect to the development of the fee waiver standard, the GAO undertook a study concerning, among other things, the incidence of fee waivers based on ability to pay. The GAO noted that the Interim Final Rule did not provide specific guidance on the criteria providers should use to determine a client's ability to pay. *See* GAO Report at 29–32. The GAO noted variations in the rate of fee waivers and recommended that EOUST adopt clearer guidance to providers to reduce uncertainty among providers concerning appropriate fee waiver criteria, to improve transparency concerning EOUST's assessment of fee waiver policies, and to increase the availability of fee waivers by setting clear minimum benchmarks for ability to pay. *Id.* at 32, 40–41.

Among the ten largest providers, six use household income at or below 150 percent of the poverty level as the threshold for determining eligibility for a fee waiver. Two providers consider the debtor's income and whether the debtor was granted a court fee waiver; one provider uses 100 percent of poverty level; and one provider assesses the debtor's housing status and existence of severe hardship. In 2011, EOUST took a random sampling of ten providers that were not among the ten largest providers to determine these providers' fee waiver policies. Half of the providers use the 150 percent of poverty level standard; one provider uses the *in forma pauperis* or *pro bono* standard without specifying 150 percent; two providers use 100 percent of the poverty level; one provider uses 200 percent of the poverty level; and one provider does not charge a fee for its instructional course.

In the proposed rule, EOUST proposed a bright-line standard establishing entitlement to a fee waiver for debtors with household income equal to or less than 150 percent of the poverty level. That standard was based on the *in forma pauperis* standard set forth in 28 U.S.C. 1930(f)(1), which permits the bankruptcy court to waive filing fees for eligible individuals. The proposed rule standard did not grant debtors the discretion to determine whether clients otherwise were able to pay the fees.

Subsequently, EOUST received and considered comments to the proposed rule. EOUST agreed that

implementation of the proposed standardized fee waiver raised some policy concerns. Because standardization fails to take into account local differences, disparate impact on providers may result when providers located in geographic areas of concentrated low income individuals are required to grant fee waivers at a higher rate than those in more affluent areas. Although a provider may apply to EOUST to increase its fee by demonstrating that its costs of delivering services (including opportunity costs associated with waived or reduced fees) justify the proposed fee, increases in fees ultimately shift the fee burden to those debtors more able to pay. As of July 2009, according to self-reporting by approved debtor education providers, without the proposed mandatory fee waiver, 12.2 percent of certificates were issued at no cost, with another 13.9 percent issued at reduced cost. In comparison, based on available data from 2005, approximately 30 percent of chapter 7 debtors were eligible to apply for a waiver of the court filing fee pursuant to the 150 percent *in forma pauperis* standard. Based on this analysis, EOUST concluded that if providers were subject to a mandatory fee waiver policy with respect to all such debtors based on the *in forma pauperis* standard, some providers might suffer financial losses that would render them unable to provide services, reducing capacity to serve the overall debtor population.

Accordingly, EOUST revised this rule to include a rebuttable presumption to the objective fee waiver standard. In adopting the presumption, EOUST seeks to balance the need for an objective fee waiver standard and complying with 11 U.S.C. 111(d)(1)(E) with providers' need to collect adequate fees for services provided. Under the rebuttable presumption, a debtor with household income equal to or less than 150 percent of the poverty level is presumptively entitled to a fee waiver, but the provider may determine, based on information it receives from the debtor, that the debtor actually is able to pay the fee in part. In that case, the provider may charge the debtor a reduced fee, taking into account the debtor's actual ability to pay. This rebuttable presumption balances the need for an objective fee waiver standard, consumer protection, and the need to ensure provider compliance with the Bankruptcy Code with the providers' need to collect adequate fees.

Additionally, although EOUST considered indexing fee waivers to debtor income, EOUST determined that such an indexing system fails to take into account the variation in ability to pay for debtors at the same income level. For example, two debtors may have income at 150 percent of the poverty level, but one debtor lives in a rent-free home and has few expenses while the other has significant expenses, such as accumulated medical debts or child support payments. An inflexible indexing standard does not take into account the individual's actual ability to pay the fee, as set forth in 11 U.S.C. 111(d)(1)(E). EOUST concluded that each provider should determine each debtor's eligibility based on the debtor's individual financial circumstances.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($100 million). 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 rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the United States Trustee to approve providers of a personal financial management instructional course. The United States Trustee will not share this information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. 71 FR 59,818, 59,827 (Oct. 11, 2006), JUSTICE/UST–005, Credit Counseling and Debtor Education Files and Associated Records.

Public Law 104–134 (April 26, 1996) requires that any person doing business with the federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to section 7701 of title 31, United States Code. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, Part 58 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

■ 1. The authority citation for Part 58 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202, 1302, 1328(g), 28 U.S.C. 509, 510, 586, 589b.

■ 2. Sections 58.25 through 58.27 are revised to read as follows:

§ 58.25 Definitions.

(a) The following definitions apply to §§ 58.25 through and including 58.36 of this Part, as well as the applications and other materials providers submit in an effort to establish they meet the requirements necessary to become an approved provider of a personal financial management instructional course.

(b) These terms shall have these meanings:

(1) The term ''accreditation'' means the recognition or endorsement that an accrediting organization bestows upon a provider because the accrediting organization has determined the provider meets or exceeds all the accrediting organization's standards;

(2) The term ''accrediting organization'' means either an entity that provides accreditation to providers or provides certification to instructors, provided, however, that an accrediting organization shall:

(i) Not be a provider or affiliate of any provider; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term ''affiliate'' means:

(i) Every entity that is an affiliate of the provider, as the term ''affiliate'' is defined in 11 U.S.C. 101(2), except that the word ''provider'' shall be substituted

for the word ''debtor'' in 11 U.S.C. 101(2);

(ii) Each of a provider's officers and each of a provider's directors; and

(iii) Every relative of a provider's officers and every relative of a provider's directors;

(4) The term ''application'' means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST–DE1, *Application for Approval as a Provider of a Personal Financial Management Instructional Course,* as it shall be amended from time to time;

(5) The term ''approved list'' means the list of providers currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program's Internet site, which is located on the United States Department of Justice's Internet site;

(6) The term ''approved provider'' means a provider currently approved by a United States Trustee under 11 U.S.C. 111 as an approved provider of a personal financial management instructional course eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(7) The term ''certificate'' means the document an approved provider shall provide to a debtor after the debtor completes an instructional course, if the approved provider does not notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure that a debtor has completed the instructional course;

(8) The term ''debtor'' shall have the meaning given that term in 11 U.S.C. 101(13), to the extent that individual has sought an instructional course from an approved provider;

(9) The term ''Director'' means the person designated or acting as the Director of the Executive Office for United States Trustees;

(10) The term ''effective instruction'' means the actual receipt of an instructional course by a debtor from an approved provider, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 111; and

(ii) this part;

(11) The term ''entity'' shall have the meaning given that term in 11 U.S.C. 101(15);

(12) The terms ''fee'' and ''fee policy'' each mean the aggregate of all fees an approved provider charges debtors for providing an instructional course, including the fees for any materials; ''fee policy'' shall also mean the objective criteria the provider uses in determining whether to waive or reduce any fee, contribution, or payment;

(13) The term ''final decision'' means the written determination issued by the Director based upon the review of the United States Trustee's decision either to deny a provider's application or to remove an approved provider from the approved list;

(14) The term ''financial benefit'' means any interest equated with money or its equivalent, including, but not limited to, stocks, bonds, other investments, income, goods, services, or receivables;

(15) The term ''governmental unit'' shall have the meaning given that term in 11 U.S.C. 101(27);

(16) The term ''independent contractor'' means a person or entity who provides any goods or services to an approved provider other than as an employee and as to whom the approved provider does not:

(i) Direct or control the means or methods of delivery of the goods or services being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(17) The term ''instructional course'' means a course in personal financial management that is approved by the United States Trustee under 11 U.S.C. 111 and this part, including the learning materials and methodologies in § 58.33(f), which is to be taken and completed by the debtor after the filing of a bankruptcy petition and before receiving a discharge under 11 U.S.C. 727(a)(11), 1141(d)(3) or 1328(g)(1);

(18) The term ''instructor'' means an individual who teaches, presents or explains substantive instructional course materials to debtors, whether provided in person, by telephone, or through the Internet;

(19) The term ''languages offered'' means every language other than English in which an approved provider offers an instructional course;

(20) The term ''legal advice'' shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(21) The term ''limited English proficiency'' refers to individuals who:

(i) Do not speak English as their primary language; and

(ii) Have a limited ability to read, write, speak, or understand English;

(22) The term ''material change'' means, alternatively, any change:

(i) In the name, structure, principal contact, management, instructors, physical location, instructional course, fee policy, language services, or method of delivery of an approved provider; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement a provider previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(23) The term ''method of delivery'' means one or more of the three methods by which an approved provider can provide some component of an instructional course to debtors, including:

(i) ''In person'' delivery, which applies when a debtor primarily receives an instructional course at a physical location with an instructor physically present in that location, and with the instructor providing oral and/or written communication to the debtor at the facility;

(ii) ''Telephone'' delivery, which applies when a debtor primarily receives an instructional course by telephone; and

(iii) ''Internet'' delivery, which applies when a debtor primarily receives an instructional course through an Internet Web site;

(24) The term ''notice'' in § 58.36 means the written communication from the United States Trustee to a provider that its application to become an approved provider has been denied or to an approved provider that it is being removed from the approved list;

(25) The term ''provider'' shall mean any entity that is applying under this part for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved provider;

(26) The term ''referral fees'' means money or any other valuable consideration paid or transferred between an approved provider and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any debtor to receive an instructional course from the approved provider;

(27) The term ''relative'' shall have the meaning given that term in 11 U.S.C. 101(45);

(28) The term ''request for review'' means the written communication from a provider to the Director seeking review of the United States Trustee's decision either to deny the provider's application or to remove the provider from the approved list;

(29) The term ''state'' means state, commonwealth, district, or territory of the United States;

(30) The term ''United States Trustee'' means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this part.

§ 58.26 Procedures all providers shall follow when applying to become approved providers.

(a) A provider applying to become an approved provider shall obtain an application, including appendices, from the United States Trustee.

(b) The provider shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The provider shall submit the original of the completed application, including completed appendices and the required supporting documents, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by a representative of the provider who is authorized under applicable law to sign on behalf of the applying provider.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the provider, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application, and it may be returned if:

(1) It is incomplete;

(2) It fails to include the completed appendices or all of the required supporting documents; or

(3) It is not accompanied by the certification identified in the preceding subsection.

(g) The United States Trustee shall not consider an application on behalf of a provider, and it shall be returned if:

(1) It is submitted by any entity other than the provider; or

(2) Either the application or the accompanying certification is executed by any entity other than a representative of the provider who is authorized under applicable law to sign on behalf of the provider.

(h) By the act of submitting an application, a provider consents to the release and disclosure of its name, contact information, and non-confidential business information relating to the services it provides on the approved list should its application be approved.

§ 58.27 Automatic expiration of providers' status as approved providers.

(a) Except as provided in § 58.28(c), if an approved provider was not an approved provider immediately prior to the date it last obtained approval to be an approved provider, such an approved provider shall cease to be an approved provider six months from the date on which it was approved unless the United States Trustee approves an additional one year period.

(b) Except as provided in § 58.28(c), if an approved provider was an approved provider immediately prior to the date it last obtained approval to be an approved provider, such a provider shall cease to be an approved provider one year from the date on which it was last approved to be an approved provider unless the United States Trustee approves an additional one year period.

■ 3. Sections 58.28 through 58.36 are added and read as follows:

§ 58.28 Procedures all approved providers shall follow when applying for approval to act as an approved provider for an additional one year period.

(a) To be considered for approval to act as an approved provider for an additional one year term, an approved provider shall reapply by complying with all the requirements specified for providers under 11 U.S.C. 111, and under this part.

(b) Such a provider shall apply no later than 45 days prior to the expiration of its six month probationary period or annual period to be considered for approval for an additional one year period, unless a written extension is granted by the United States Trustee.

(c) An approved provider that has complied with all prerequisites for applying to act as an approved provider for an additional one year period may continue to operate as an approved provider while its application is under review by the United States Trustee, so long as either the application for an additional one year period is timely submitted, or a provider receives a written extension from the United States Trustee.

§ 58.29 Renewal for an additional one year period.

If an approved provider's application for an additional one year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

§ 58.30 Mandatory duty of approved providers to notify United States Trustees of material changes.

(a) An approved provider shall immediately notify the United States Trustee in writing of any material change.

(b) An approved provider shall immediately notify the United States Trustee in writing of any failure by the approved provider to comply with any standard or requirement specified in 11 U.S.C. 111, this part, or the terms under which the United States Trustee approved it to act as an approved provider.

(c) An approved provider shall immediately notify the United States Trustee in writing of any of the following events:

(1) Cessation of business by the approved provider or by any office of the provider, or withdrawal from any federal judicial district(s) where the approved provider is approved;

(2) Any investigation of, or any administrative or judicial action brought against, the approved provider by any governmental unit;

(3) Any action by a governmental unit or a court to suspend or revoke the approved provider's articles of incorporation, or any license held by the approved provider, or any authorization necessary to engage in business; or

(4) A suspension, or action to suspend, any accreditation held by the approved provider, or any withdrawal by the approved provider of any application for accreditation, or any denial of any application of the approved provider for accreditation; or

(5) [reserved].

(d) A provider shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved provider is pending before the United States Trustee.

(e) An approved provider whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

§ 58.31 Mandatory duty of approved providers to obtain prior consent of the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved provider, a provider agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) The engagement of an independent contractor to provide an instructional course;

(2) Any increase in the fees received from debtors for an instructional course or a change in the provider's fee policy;

(3) Expansion into additional federal judicial districts;

(4) Any changes to the method of delivery the approved provider employs to provide an instructional course; or

(5) Any changes in the approved provider's instructional course.

(b) A provider applying to become an approved provider shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The provider's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in § 58.26(e).

(c) An approved provider shall not transfer or assign its United States Trustee approval to act as an approved provider.

§ 58.32 Continuing requirements for becoming and remaining approved providers.

(a) To become an approved provider, a provider must affirmatively establish, to the satisfaction of the United States Trustee, that the provider at the time of approval:

(1) Satisfies every requirement of this part; and

(2) Provides effective instruction to its debtors.

(b) To remain an approved provider, an approved provider shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved provider:

(1) Has satisfied every requirement of this part;

(2) Has provided effective instruction to its debtors; and

(3) Will continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

§ 58.33 Minimum qualifications providers shall meet to become and remain approved providers.

To meet the minimum qualifications set forth in § 58.32, and in addition to the other requirements set forth in this part, providers and approved providers shall comply with paragraphs (a) through (n) of this section on a continuing basis:

(a) *Compliance with all laws.* A provider shall comply with all applicable laws and regulations of the United States and each state in which the provider provides an instructional course including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* A provider shall not provide legal advice.

(c) *Ethical standards.* A provider shall:

(1) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 28 U.S.C. 586(a)(1) for any federal judicial district where the provider is providing or is applying to provide an instructional course, a federal judge in any federal judicial district where the provider is providing or is applying to provide an instructional course, or a federal court employee in any federal judicial district where the provider is providing or is applying to provide an instructional course;

(2) Not enter into any referral agreement or receive any financial benefit that involves the provider paying to or receiving from any entity or person referral fees for the referral of debtors to or by the provider; and

(3) Not enter into agreements involving an instructional course that create a conflict of interest; and

(4) Not contact any debtor utilizing the United States Postal Service, or other mail carrier, or electronic mail for the purpose of soliciting debtors to utilize the provider's instructional course, unless:

(i) Any such solicitations include the phrase ''This is an advertisement for services'' or ''This is a solicitation;''

(ii) Prominently displayed at the beginning of each page of the solicitation;

(iii) In a font size larger than or equal to the largest font size otherwise used in the solicitation;

(iv) Any such solicitations include only logos, seals, or similar marks that are substantially dissimilar to the logo, seal, or similar mark of any agency or court of the United States government, including but not limited to the United States Trustee Program.

(d) *Instructor training, certification and experience.* A provider shall:

(1) Use only instructors who possess adequate experience providing an instructional course, which shall mean that each instructor either:

(i) Holds one of the certifications listed below and who has complied with all continuing education requirements necessary to maintain that certification:

(A) Certified as a Certified Financial Planner;

(B) Certified as a credit counselor by an accrediting organization;

(C) Registered as a Registered Financial Consultant; or

(D) Certified as a Certified Public Accountant; or

(ii) Has successfully completed a course of study or worked a minimum of six months in a related area such as personal finance, budgeting, or credit or debt management. A course of study must include training in personal finance, budgeting, or credit or debt management. An instructor shall also receive annual continuing education in the areas of personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing an instructional course, which shall mean that, at a minimum, the provider shall either:

(i) Have experience in providing an instructional course for the two years immediately preceding the relevant application date; or

(ii) For each office providing an instructional course, employ at least one supervisor who has met the qualifications in paragraph (d)(2)(i) of this section for no fewer than two of the five years preceding the relevant application date; and

(iii) If offering any component of an instructional course by a telephone or Internet method of delivery, use only instructors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such an instructional course by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the instructional course is the debtor, and to determine whether the debtor has completely received an instructional course.

(e) *Use of the telephone and the Internet to deliver a component of an instructional course.* A provider shall:

(1) Not provide any debtor a diminished instructional course because the debtor receives any portion of the instructional course by telephone or Internet;

(2) Confirm the identity of the debtor before commencing an instructional course by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the debtor and assigning an individual access code,

user ID, or password at the time of enrollment;

(ii) Requiring the debtor to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the instructional course; and

(iii) Employing adequate means to measure the time spent by the debtor to complete the instructional course.

(f) *Learning materials and methodologies.* A provider shall provide learning materials to assist debtors in understanding personal financial management and that are consistent with 11 U.S.C. 111, and this part, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income; and

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance; and

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) Identifying the types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

(iii) Discussing appropriate use of credit and alternatives to credit use; and

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Identifying public and nonprofit resources for consumer assistance; and

(ii) Identifying applicable consumer protection laws and regulations, such as those governing correction of a credit record and protection against consumer fraud; and

(5) Coping with unexpected financial crisis, which consists of the following:

(i) Identifying alternatives to additional borrowing in times of unanticipated events; and

(ii) Seeking advice from public and private service agencies for assistance.

(g) *Course procedures.*

(1) Generally, a provider shall:

(i) Ensure the instructional course contains sufficient learning materials and teaching methodologies so that the debtor receives a minimum of two hours of instruction, regardless of the method of delivery of the course;

(ii) Use its best efforts to collect from each debtor a completed course evaluation at the end of the instructional course. At a minimum, the course evaluation shall include the information contained in Appendix E of the application to evaluate the effectiveness of the instructional course;

(2) For an instructional course delivered in person, the provider shall:

(i) Ensure that an instructor is present to instruct and interact with debtors; and

(ii) Limit class size to ensure an effective presentation of the instructional course materials;

(3) For instructional courses delivered by the telephone, the provider shall:

(i) Ensure an instructor is telephonically present to instruct and interact with debtors;

(ii) Provide learning materials to debtors before the telephone instructional course session;

(iii) Incorporate tests into the curriculum that support the learning materials, ensure completion of the course, and measure comprehension;

(iv) Ensure review of tests prior to the completion of the instructional course; and

(v) Ensure direct oral communication from an instructor by telephone or in person with all debtors who fail to complete the test in a satisfactory manner or who receive less than a 70 percent score;

(4) For instructional courses delivered through the Internet, the provider shall:

(i) Comply with § 58.33(g)(3)(iii), (iv), and (v); provided, however, that to the extent instruction takes place by Internet, the provider may comply with § 58.33(g)(3)(v) by ensuring direct communication from an instructor by electronic mail, live chat, or telephone; and

(ii) Respond to a debtor's questions or comments within one business day.

(h) *Services to hearing and hearing-impaired debtors.* A provider shall furnish toll-free telephone numbers for both hearing and hearing-impaired debtors whenever telephone communication is required. The provider shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired debtors.

(i) [reserved].

(j) *Services to debtors with special needs.* A provider that provides any portion of its instructional course in person shall comply with all federal, state and local laws governing facility accessibility. A provider shall also provide or arrange for communication assistance for debtors with special needs who have difficulty making their service needs known.

(k) *Mandatory disclosures to debtors.* Prior to providing any information to or obtaining any information from a debtor, and prior to delivering an instructional course, a provider shall disclose:

(1) The provider's fee policy, including any fees associated with generation of the certificate;

(2) The provider's policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay. To the extent an approved provider publishes information concerning its fees on the Internet, such fee information must include the provider's policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay;

(3) The provider's policy to provide free bilingual instruction or professional interpreter assistance to any limited English proficient debtor;

(4) The instructors' qualifications;

(5) The provider's policy prohibiting it from paying or receiving referral fees for the referral of debtors;

(6) The provider's obligation to provide a certificate to the debtor promptly upon the completion of an instructional course;

(7) The fact that the provider might disclose debtor information to the United States Trustee in connection with the United States Trustee's oversight of the provider, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(8) The fact that the United States Trustee has reviewed only the provider's instructional course (and, if applicable, its services as a credit counseling agency pursuant to 11 U.S.C. 111(c)), and the fact that the United States Trustee has neither reviewed nor approved any other services the provider provides to debtors; and

(9) The fact that a debtor will only receive a certificate if the debtor completes an instructional course.

(l) *Complaint Procedures.* A provider shall employ complaint procedures that adequately respond to debtors' concerns.

(m) *Provider records.* A provider shall prepare and retain records that enable the United States Trustee to evaluate whether the provider is providing effective instruction and acting in

compliance with all applicable laws and this part. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the provider shall prepare and retain for a minimum of two years, and permit review of by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the provider remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Records concerning the delivery of services to debtors with limited English proficiency and special needs, and to hearing-impaired debtors, including records:

(i) Of the number of such debtors, and the methods of delivery used with respect to such debtors;

(ii) Of which languages are offered or requested, and the type of language support used or requested by such debtors (*e.g.,* bilingual instructor, in-person or telephone interpreter, translated Web instruction);

(iii) Detailing the provider's provision of services to such debtors; and

(iv) Supporting any justification if the provider did not provide services to such debtors, including the number of debtors not served, the languages involved, and the number of referrals provided;

(4) Records concerning the delivery of an instructional course to debtors for free or at reduced rates based upon the debtor's lack of ability to pay, including records of the number of debtors for whom the provider waived all of its fees under § 58.34(b)(1)(i), the number of debtors for whom the provider waived all or part of its fees under § 58.34(b)(1)(ii), and the number of debtors for whom the provider voluntarily waived all or part of its fees under § 58.34(c);

(5) Records of complaints and the provider's responses thereto;

(6) Records that enable the provider to verify the authenticity of certificates their debtors file in bankruptcy cases; and

(7) Records that enable the provider to issue replacement certificates.

(n) *Additional minimum requirements.* A provider shall:

(1) Provide records to the United States Trustee upon request;

(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the provider's qualifications to be an approved provider;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the instructional course or bankruptcy process;

(5) Take no action that would limit, inhibit, or prevent a debtor from bringing an action or claim for damages against a provider, as provided in 11 U.S.C. 111(g)(2);

(6) Refer debtors seeking an instructional course only to providers that have been approved by a United States Trustee to provide such services;

(7) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in Appendix A to the application;

(8) Not disclose or provide to a credit reporting agency any information concerning whether a debtor has received or sought instruction concerning personal financial management from a provider;

(9) Not expose the debtor to commercial advertising as part of or during the debtor's receipt of an instructional course, and never market or sell financial products or services during the instructional course provided, however, this provision does not prohibit a provider from generally discussing all available financial products and services;

(10) Not sell information about any debtor to any third party without the debtor's prior written permission;

(11) Comply with the requirements elsewhere in this part concerning fees for the instructional course and fee waiver policies; and

(12) Comply with the requirements elsewhere in this part concerning certificates.

§ 58.34 Minimum requirements to become and remain approved providers relating to fees.

(a) If a fee for, or relating to, an instructional course is charged by a provider, such fee shall be reasonable:

(1) A fee of $50 or less for an instructional course is presumed to be reasonable and a provider need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding $50 for an instructional course is not presumed to be reasonable and a provider must obtain prior approval from the United States Trustee to charge such a fee. The provider bears the burden of establishing that its proposed fee is reasonable. At a minimum, the provider must demonstrate that its cost for delivering the instructional course justifies the fee. A provider that previously received permission to charge a higher fee need not reapply for permission to charge that fee during the provider's annual review. Any new requests for permission to charge more than previously approved, however, must be submitted to EOUST for approval; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the **Federal Register**.

(b)(1) A provider shall waive the fee in whole or in part whenever a debtor demonstrates a lack of ability to pay the fee.

(i) A debtor presumptively lacks the ability to pay the fee if the debtor's household current income is less than 150 percent of the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination.

(ii) The presumption shall be rebutted, and the provider may charge the debtor a reduced fee, if the provider determines, based on income information the debtor submits to the provider, that the debtor is able to pay the fee in a reduced amount. Nothing in this subsection requires an provider to charge a fee to debtors whose household income exceeds the amount set forth in paragraph (b)(1)(i) of this section, or who are able to demonstrate ability to pay based on income as described in this subsection.

(iii) A provider shall disclose its fee policy, including the criteria on which

it relies in determining a debtor's eligibility for reduced fees, and the provider's policy for collecting fees pursuant to paragraph (b)(1)(ii) of this section, in accordance with § 58.33(k)(2).

(2) The United States Trustee shall review the basis for the mandatory fee waiver policy set forth in paragraph (b)(1) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the impact of that fee waiver policy on debtors and providers. Any revisions to the mandatory fee waiver policy set forth in paragraph (b)(1) of this section shall be published in the **Federal Register**.

(c) Notwithstanding the requirements of paragraph (b) of this section, a provider also may waive fees based upon other considerations, including, but not limited to:

(1) The debtor's net worth;

(2) The percentage of the debtor's income from government assistance programs;

(3) Whether the debtor is receiving pro bono legal services in connection with a bankruptcy case; or

(4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the debtor and his or her spouse, when multiplied times twelve, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) A provider shall not require a debtor to purchase an instructional course in connection with the purchase of any other service offered by the provider.

(e) A provider who is also a chapter 13 standing trustee may only provide the instructional course to debtors in cases in which the trustee is appointed to serve and may not charge any fee to those debtors for the instructional course. A standing chapter 13 trustee may not require debtors in cases administered by the trustee to obtain the instructional course from the trustee. Employees and affiliates of the standing trustee are also bound by the restrictions in this section.

§ 58.35 Minimum requirements to become and remain approved providers relating to certificates.

(a) An approved provider shall send a certificate only to the debtor who took and completed the instructional course, except that an approved provider shall instead send a certificate to the attorney of a debtor who took and completed an instructional course if the debtor specifically directs the provider to do so. In lieu of sending a certificate to the debtor or the debtor's attorney, an approved provider may notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure that a debtor has completed the instructional course.

(b) An approved provider shall send a certificate to a debtor, or notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure, that a debtor has completed the instructional course no later than three business days after the debtor completed an instructional course and after completion of a debtor course evaluation form that evaluates the effectiveness of the instructional course. The approved provider shall not withhold the issuance of a certificate or notice of course completion to the appropriate bankruptcy court because of a debtor's failure to submit an evaluation form, though the provider should make reasonable effort to ensure that debtors complete and submit course evaluation forms.

(c) If a debtor has completed instruction, a provider may not withhold certificate issuance or notice of course completion to the appropriate bankruptcy court for any reason, including, without limitation, a debtor's failure to obtain a passing grade on a quiz, examination, or test. A provider may not consider instructional services incomplete based solely on the debtor's failure to pay the fee. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the approved provider cannot deny a certificate to a debtor or notice of course completion to the appropriate bankruptcy court if the debtor has completed the course as designed.

(d) An approved provider shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee, except under exigent circumstances with notice to the United States Trustee.

(e) An approved provider shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(f) An approved provider shall issue a certificate, or provide notice of course completion to the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure, with respect to each debtor who completes an instructional course. Spouses receiving an instructional course jointly shall each receive a certificate or notice of course completion to the appropriate bankruptcy court shall be made for both individuals.

(g) An approved provider shall issue a replacement certificate to a debtor who requests one.

(h) Only an authorized officer, supervisor or employee of an approved provider shall issue a certificate, or provide notice of course completion to the appropriate bankruptcy court, and an approved provider shall not transfer or delegate authority to issue a certificate or provide notice of course completion to any other entity.

(i) An approved provider shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(j) An approved provider shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (h) of this section, which signature shall be either:

(1) An original signature; or

(2) In a format approved for electronic filing with the court (most typically in the form /s/ name of instructor).

(k) An approved provider shall affix to the certificate the exact name under which the approved provider is incorporated or organized.

(l) An approved provider shall identify on the certificate:

(1) The specific federal judicial district requested by the debtor;

(2) Whether an instructional course was provided in person, by telephone or via the Internet;

(3) The date and time (including the time zone) when instructional services were completed by the debtor; and

(4) The name of the instructor that provided the instructional course.

(m) An approved provider shall affix the debtor's full, accurate name to the certificate. If the instructional course is obtained by a debtor through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

§ 58.36 Procedures for obtaining final provider action on United States Trustees' decisions to deny providers' applications and to remove approved providers from the approved list.

(a) The United States Trustee shall remove an approved provider from the approved list whenever an approved provider requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved provider from the approved list, and thereby terminate the approved provider's authorization to provide an instructional course, at any time.

(c) The United States Trustee may issue a decision to deny a provider's application or to remove a provider from the approved list whenever the United States Trustee determines that the provider has failed to comply with the standards or requirements specified in 11 U.S.C. 111, this part, or the terms under which the United States Trustee designated it to act as an approved provider, including, but not limited to, finding any of the following:

(1) If any entity has suspended or revoked the provider's license to do business in any jurisdiction; or

(2) Any United States district court has removed the provider under 11 U.S.C. 111(e).

(d) The United States Trustee shall provide to the provider in writing a notice of any decision either to:

(1) Deny the provider's application; or

(2) Remove the provider from the approved list.

(e) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the provider copies of any such documents that were not supplied to the United States Trustee by the provider. The notice shall be sent to the provider by overnight courier, for delivery the next business day.

(f) Except as provided in paragraph (h) of this section, the notice shall advise the provider that the denial or removal decision shall become final agency action, and unreviewable, unless the provider submits in writing a request for review by the Director no later than 21 calendar days from the date of the notice to the provider.

(g) Except as provided in paragraph (h) of this section, the decision to deny a provider's application or to remove a provider from the approved list shall take effect upon:

(1) The expiration of the provider's time to seek review from the Director, if the provider fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final decision, if the provider timely seeks such review.

(h) The United States Trustee may provide that a decision to remove a provider from the approved list is effective immediately and deny the provider the right to provide an instructional course whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) or (2) of this section.

(i) A provider's request for review shall be in writing and shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the provider wants the Director to consider in reviewing the denial or removal decision. The provider shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. To be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the provider.

(j) The United States Trustee shall have 21 calendar days from the date of the provider's request for review to submit to the Director a written response regarding the matters raised in the provider's request for review. The United States Trustee shall provide a copy of this response to the provider by overnight courier, for delivery the next business day.

(k) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(l) In reviewing the decision to deny a provider's application or to remove a provider from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(m) Except as provided in paragraph (n) of this section, the Director shall issue a final decision no later than 60 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the provider's request for review shall constitute final agency action.

(n) Whenever the United States Trustee provides under paragraph (h) of this section that a decision to remove a provider from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time. The decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the provider should be removed from the approved list; after issuing the decision, the Director shall issue a final decision by the deadline set forth in paragraph (m) of this section.

(o) In reaching a decision under paragraphs (m) or (n) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(p) A provider that files a request for review shall bear its own costs and expenses, including counsel fees.

(q) When a decision to remove a provider from the approved list takes effect, the provider shall:

(1) Immediately cease providing an instructional course to debtors;

(2) No later than three business days after the date of removal, send all certificates to all debtors who completed an instructional course prior to the provider's removal from the approved list; and

(3) No later than three business days after the date of removal, return all fees to debtors who had paid for an instructional course, but had not completely received the instructional course.

(r) A provider must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: February 14, 2013.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. 2013–04364 Filed 3–13–13; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0128]

RIN 1625–AA00

Safety Zone; M/V XIANG YUN KOU and MODU NOBLE DISCOVERER; Resurrection Bay, Seward, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters, from surface to

seabed, around the Motor Vessel (M/V) XIANG YUN KOU and the Mobile Offshore Drilling Unit (MODU) NOBLE DISCOVERER with a planned transit through Resurrection Bay. The temporary safety zone will encompass the navigable waters within a 500 yard radius of the MODU NOBLE DISCOVERER from dock to loading in Resurrection Bay, Seward, Alaska, onto the transport ship M/V XIANG YUN KOU, and during the vessels intended route through Resurrection Bay. The purpose of the safety zone is to protect the persons and vessels from the inherent dangers of towing, loading, and transport operations of the MODU NOBLE DISCOVERER.

DATES: This rule is effective with actual notice from March 1, 2013 until March 14, 2013. This rule is effective in the *Code of Federal Regulations* from March 14, 2013 until March 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0128 and are available online by going to *http://www.regulations.gov,* inserting USCG–2013–0128 in the ''Keyword'' box, and then clicking ''Search.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Nathan Menefee, U.S. Coast Guard, Sector Anchorage, Assistant Chief, Inspections Division; telephone 907–271–6707, email *Nathan.S.Menefee@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard was given insufficient prior notice by the MODU operator that towing was necessary, and as such, it is impracticable to undertake notice and comment. Immediate action is needed to protect human life, property, and the environment from possible tampering, collisions, allisions, oil spills, and releases during this transit.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because immediate action is needed to minimize potential danger to the public during the event.

B. Basis and Purpose

The Coast Guard proposes the establishment of a temporary safety zone around the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER while towing, loading, and transporting in approximate position lat. 60°06′30″ North and long. 149°24′00″ West in Resurrection Bay, Alaska, and through Resurrection Bay, Alaska. The Coast Guard believes a safety zone is needed based on the significant number of persons, vessels, and activities involved to tow and load the MODU NOBLE DISCOVERER and has determined that it is highly likely that any tampering, collision, allision, or inability to identify, monitor or mitigate persons, vessels, and any additional hazards that might be encountered could result in a hazardous situation.

The loading of the MODU NOBLE DISCOVERER aboard the M/V XIANG YUN KOU is a complex operation involving multiple assist vessels maneuvering in close proximity to each other. The vessels involved in the loading and transportation operation must be able to safely move around the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER during the operation without impediment.

C. Discussion of Rule

For the reasons stated above, the Coast Guard is establishing a safety zone in the navigable waters, from surface to seabed, within a 500 yard radius of the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER while towing, loading, and transporting in and through Resurrection Bay, Alaska from March 1, 2013, through March 15, 2013. If transporting operations are completed, and the safety zone is determined to be no longer necessary, enforcement of the zone will end prior to March 15, 2013.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The proposed rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the vicinity of transit in the waters of Resurrection Bay, Seward, Alaska. The proposed safety zone is designed to allow vessels transiting through the area to safely travel around the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER during towing, loading and transporting operations without incurring additional cost or delay.

2. Impact on Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit through or anchor in the transit route in Resurrection Bay, Alaska from March 2, 2013, through March 15, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be effective for a short period of time, and enforcement will end once the vessels have departed Resurrection Bay, Alaska.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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.

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T17–0128 to read as follows:

§ 165.T17–0128 Safety Zone: Resurrection Bay, Seward, AK.

(a) *Location.* The following areas are safety zones: The established safety zone includes the navigable waters from surface to seabed within a 500 yard radius around the M/V XIANG YUN KOU and the MODU NOBLE DISCOVERER, in approximate position lat. 60°06′30″ North and long. 149°24′00″ West in Resurrection Bay, Seward, Alaska with a planned transit through Resurrection Bay, Alaska.

(b) *Effective date.* The Safety Zone is effective beginning March 1, 2013, from 8 a.m. local time through March 15, 2013, 10 p.m. local time or until the vessels transit outside the United States territorial seas.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the areas described in paragraph (a). In addition

to the general regulations, the following provisions apply to this safety zone:

(1) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(2) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(3) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(4) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force including notification that the MODU NOBLE DISCOVERER is loaded onto the M/V XIANG YUN KOU by providing notice in accordance with 33 CFR 165.7.

(d) Penalties. Persons and vessels violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: March 1, 2013.

Paul Mehler III,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 2013–05904 Filed 3–13–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC–2013–0001; 2135–AA31]

Seaway Regulations and Rules: Periodic Update, Various Categories

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The changes will update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; Dangerous Cargo; and, Information and Reports. These amendments are necessary to take account of updated procedures and will enhance the safety of transits through the Seaway. Several of the amendments are merely editorial or for clarification of existing requirements. The joint regulations will become effective in Canada on March 31, 2013. For consistency, because these are joint regulations under international agreement, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make the U.S. version of the amendments effective on the same date.

DATES: The rule will become effective on March 31, 2013.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://www.Regulations.gov;* or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Regulations and Rules in various categories. The changes will update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; Dangerous Cargo; and, Information and Reports. These updates are necessary to take account of updated procedures which will enhance the safety of transits through the Seaway. Many of these changes are to clarify existing requirements in the regulations. Where new requirements or regulations are made, an explanation for such a change is provided below. The joint regulations will become effective in Canada on March 31, 2013. For consistency, because these are joint regulations under international agreement, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make the U.S. version of the amendments effective on the same date.

Regulatory Notices: 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) or you may visit *http://www.Regulations.gov.*

The SLSDC is amending two sections of the Condition of Vessels portion of the joint Seaway regulations. Under section 401.10, ''Mooring lines'', the SLSDC is providing flexibility to vessels by allowing the use of soft lines with a diameter not greater than 64 mm. For safety purposes in section 401.14, ''Anchor marking buoys'', the SLSDC is amending the rules to require vessels to deploy an anchor marking buoy when dropping anchor in the Seaway.

In the Seaway Navigation section, the Seaway Corporations are amending their joint rules in section 401.49, ''Dropping anchor or tying to a canal'', to require every anchor to be suitably rigged for immediate release, holding, and efficient retrieval. Currently, some tug and barge combinations are not equipped with a windlass or other means to retrieve an anchor and therefore must retrieve the anchor using ''block and tackle'' arrangements, which are not suitable for anchor retrieval. One comment was received which inquired whether there is sufficient and common knowledge that block and tackle arrangements are not suitable under this section. Since 2000, the Canadian Seaway in its Seaway Handbook has required that a stern ''anchor shall be suitably rigged for immediate release, holding and efficient retrieval.'' There have been several instances where a vessel and/or barge had inoperative windlasses or winch systems. While it was easy for the vessel to release an anchor, there were many times that it took several hours to retrieve the anchor. Block and tackle arrangements are not suitable to use in Seaway waters

where the channel is narrow and one vessel can block the channel for hours resulting in delays to other traffic and putting other vessels in an unsafe condition or location because the other vessel or barge is using block and tackle to retrieve an anchor. This requirement applies to both emergency and authorized anchorings.

In the Dangerous Cargo section, the rules are amended to require that before any hot work, which is defined as any work that uses flame or than can produce a source of ignition, cutting or welding, can be carried out on any vessels at SLSMC approach walls or wharfs, a written request must be sent to the SLSMC. In addition, the rules specify requirements for tankers performing hot work. Such vessels must be gas free or have their tanks inerted in order to obtain clearance from the SLSMC Traffic Control Center.

In the Information and Reports section, a change to section 401.79, ''Advance notice of arrival, vessels requiring inspection'' is made. The amendments will require tug and barge combinations not on the ''Seaway Approved Tow'' list to be inspected prior to every transit of the Seaway unless they are provided with a valid Inspection Report for a round trip transit.

The other changes to the joint regulations are merely editorial or to clarify existing requirements.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et seq.) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR part 401, Regulations and Rules, as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

■ 1. The authority citation for subpart A of part 401 continues to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a) (4), as amended; 49 CFR 1.52, unless otherwise noted.

■ 2. In § 401.10, revise paragraph (a)(2); and add a new paragraph (e) to read as follows:

§ 401.10 Mooring lines.

(a) * * *

(2) Have a diameter not greater than 28 mm for wire line and not greater than 64 mm for approved synthetic lines;

* * * * *

(e) Hand held synthetic lines if permitted by the Manager or Corporation shall meet the criteria in paragraph (a) of this section and shall have a minimum length of not less than 65 meters.

* * * * *

■ 3. Revise § 401.14 to read as follows:

§ 401.14 Anchor marking buoys.

(a) A highly visible anchor marking buoy of a type approved by the Manager and the Corporation, fitted with 22 m of suitable line, shall be secured directly to each anchor so that the buoy will mark the location of the anchor when the anchor is dropped.

(b) Every vessel shall deploy the anchor marking buoy when dropping an anchor in Seaway waters.

■ 4. In § 401.28, revise paragraph (d) to read as follows:

§ 401.28 Speed limits.

* * * * *

(d) Notwithstanding the above speed limits, every vessel approaching a free standing lift bridge shall proceed at a speed so that it will not pass the Limit of Approach sign should the raising of the bridge be delayed.

■ 5. Revise § 401.29 to read as follows:

§ 401.29 Maximum draft.

(a) Notwithstanding any provision herein, the loading of cargo, draft and speed of a vessel in transit shall be controlled by the master, who shall take into account the vessel's individual characteristics and its tendency to list or squat, so as to avoid striking bottom.[1]

(b) The draft of a vessel shall not, in any case, exceed 79.2 dm or the maximum permissible draft designated in a Seaway Notice by the Manager and the Corporation for the part of the Seaway in which a vessel is passing.

(c) Any vessel equipped with an operational Draft Information System (DIS) verified by a member of the International Association of Classification Societies (IACS) as compliant with the Implementation Specifications found at *http://www.greatlakes-seaway.com* and having onboard the items listed in paragraphs (c)(1) through (5) of this section will be permitted, when using the DIS, subject to paragraph (a) of this section, to increase their draft by no more than 7 cm above the maximum permissible draft prescribed under paragraph (b) of this section in effect at the time:

(1) An operational AIS with accuracy=1 (DGPS); and

(2) Up-to-date electronic navigational charts; and

(3) Up-to-date charts containing high-resolution bathymetric data, and

(4) The DIS Display shall be located as close to the primary conning position and be visible and legible; and

(5) A pilot plug, if using a portable DIS.

[1] The main channels between the Port of Montreal and Lake Erie have a controlling depth of 8.23m.

(d) Verification document of the DIS must be kept on board the vessel at all times and made available for inspection.

(e) A company letter attesting to officer training on use of the DIS must be kept on board and made available for inspection.

(f) Any vessel intending to use the DIS must notify the Manager or the Corporation in writing at least 24-hours prior to commencement of its initial transit in the System with the DIS.

(g) Any vessel intending to use the DIS to transit at a draft greater than the maximum permissible draft prescribed under paragraph (b) of this section in effect at the time, for subsequent transits must fax a completed confirmation checklist found at *www.greatlakes-seaway.com* to the Manager or the Corporation prior to its transit.

(h) If for any reason the DIS or AIS becomes inoperable, malfunctions, or is not used while the vessel is transiting at a draft greater than the maximum permissible draft prescribed under paragraph (b) of this section in effect at the time, the vessel must notify the Manager or the Corporation immediately.

■ 6. Revise § 401.49 to read as follows:

§ 401.49 Dropping anchor or tying to canal bank.

Except in an emergency, no vessel shall drop anchor in any canal or tie-up to any canal bank unless authorized to do so by the traffic controller. Every anchor shall be suitably rigged for immediate release, holding and efficient retrieval.

■ 7. Revise § 401.73 to read as follows:

§ 401.73 Cleaning tanks—hazardous cargo vessels.

(a) Cleaning and gas freeing of tanks shall not take place:

(1) In a canal or a lock;

(2) In an area that is not clear of other vessels or structures; and

(3) Before gas freeing and tank cleaning has been reported to the nearest Seaway station.

(b) *Hot work permission.* Before any hot work, defined as any work that uses flame or that can produce a source of ignition, cutting or welding, is carried out by any vessel on any designated St. Lawrence Seaway Management Corporation (SLSMC) approach walls or wharfs, a written request must be sent to the SLSMC, preferably 24 hours prior to the vessel's arrival on SLSMC approach walls or wharfs. The hot work shall not commence until approval is obtained from an SLSMC Traffic Control Center.

(c) *Special requirements for tankers performing hot work.* Prior to arriving at any SLSMC designated approach wall or wharf, a tanker must be gas free or have tanks inerted. The gas-free certificate must be sent to the SLSMC Traffic Control Center in order to obtain clearance for the vessel to commence hot work.

■ 8. In § 401.79 revise paragraph (b)(4) to read as follows:

§ 401.79 Advance notice of arrival, vessels requiring inspection.

* * * * *

(b) * * *

(4) Tug/barge combinations not on the ''Seaway Approved Tow'' list are subject to Seaway inspection prior to every transit of the Seaway unless provided with a valid Inspection Report for a round trip transit.

Issued at Washington, DC on March 11, 2013. Saint Lawrence Seaway Development Corporation.

Craig H. Middlebrook,

Acting Administrator.

[FR Doc. 2013–05933 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2012–0015]

RIN 0651–AC77

Changes To Implement the First Inventor To File Provisions of the Leahy-Smith America Invents Act; Correction

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office) published in the **Federal Register** of February 14, 2013, a final rule revising the rules of practice in patent cases for consistency with, and to address the examination issues raised by, the changes in the first inventor to file provisions of the Leahy-Smith America Invents Act (AIA) (First Inventor to File Final Rule). Due to a technical issue, the First Inventor to File Final Rule as published in the **Federal Register** is missing text in the provisions pertaining to claims for priority to a foreign application in an application filed under the Patent Cooperation Treaty (PCT). This document corrects the omission in the First Inventor to File Final Rule as published in the **Federal Register**.

DATES: Effective March 16, 2013.

FOR FURTHER INFORMATION CONTACT: Susy Tsang-Foster, Legal Advisor (telephone (571) 272–7711; electronic mail message *(susy.tsang-foster@uspto.gov))* or Linda S. Therkorn, Patent Examination Policy Advisor (telephone (571) 272–7837; electronic mail message *(linda.therkorn@uspto.gov)),* of the Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The Office published in the **Federal Register** of February 14, 2013, a final rule revising the rules of practice in patent cases for consistency with, and to address the examination issues raised by, the changes in the first inventor to file provisions of the AIA. *See Changes To Implement the First Inventor To File Provisions of the Leahy-Smith America Invents Act,* 78 FR 11024 (Feb. 14, 2013). The First Inventor to File Final Rule as published in the **Federal Register** is missing text in the provisions pertaining to claims for priority to a foreign application in an application filed under the PCT. *See Changes To Implement the First Inventor To File Provisions of the Leahy-Smith America Invents Act,* 78 FR 11053 (to be codified at 37 CFR 1.55(c)). Specifically, the ''371'' in ''35 U.S.C. 371'' as it appears in the body of § 1.55(c) in the electronic copy of the First Inventor to File Final Rule submitted to the Office of the Federal Register contained a hyperlink, which is not printed by the Office of the Federal Register. This document corrects the omission of ''371'' in ''35 U.S.C. 371'' in the body of § 1.55(c) in the First Inventor to File Final Rule as published in the **Federal Register**.

In rule FR Doc. 2013–03453 published on February 14, 2013 (78 FR 11024), make the following corrections:

§ 1.55 [Correction]

■ 1. On page 11053, second column, through page 11055, first column, revise amendatory instruction 6 and its amendatory text to read as follows:

■ 6. Section 1.55 is revised to read as follows:

§ 1.55 Claim for foreign priority.

(a) *In general.* An applicant in a nonprovisional application may claim priority to one or more prior foreign applications under the conditions specified in 35 U.S.C. 119(a) through (d) and (f), 172, and 365(a) and (b) and this section.

(b) *Time for filing subsequent application.* The nonprovisional application must be filed not later than

twelve months (six months in the case of a design application) after the date on which the foreign application was filed, or be entitled to claim the benefit under 35 U.S.C. 120, 121, or 365(c) of an application that was filed not later than twelve months (six months in the case of a design application) after the date on which the foreign application was filed. The twelve-month period is subject to 35 U.S.C. 21(b) (and § 1.7(a)) and PCT Rule 80.5, and the six-month period is subject to 35 U.S.C. 21(b) (and § 1.7(a)).

(c) *Time for filing priority claim and certified copy of foreign application in an application entering the national stage under 35 U.S.C. 371.* In an international application entering the national stage under 35 U.S.C. 371, the claim for priority must be made and a certified copy of the foreign application must be filed within the time limit set forth in the PCT and the Regulations under the PCT.

(d) *Time for filing priority claim in an application filed under 35 U.S.C. 111(a).* In an original application filed under 35 U.S.C. 111(a), the claim for priority must be filed within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. The claim for priority must be presented in an application data sheet (§ 1.76(b)(6)), and must identify the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The time period in this paragraph does not apply in a design application.

(e) *Delayed priority claim in an application filed under 35 U.S.C. 111(a).* Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a) through (d) or (f) or 365(a) in an original application filed under 35 U.S.C. 111(a) not presented in an application data sheet (§ 1.76(b)(6)) within the time period provided by paragraph (d) of this section is considered to have been waived. If a claim for priority is presented after the time period provided by paragraph (d) of this section, the claim may be accepted if the priority claim was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a) through (d) or (f) or 365(a) must be accompanied by:

(1) The priority claim under 35 U.S.C. 119(a) through (d) or (f) or 365(a) in an application data sheet (§ 1.76(b)(6)), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, unless previously submitted;

(2) A certified copy of the foreign application if required by paragraph (f) of this section, unless previously submitted;

(3) The surcharge set forth in § 1.17(t); and

(4) A statement that the entire delay between the date the priority claim was due under paragraph (d) of this section and the date the priority claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(f) *Time for filing certified copy of foreign application in an application filed under 35 U.S.C. 111(a).* In an original application filed under 35 U.S.C. 111(a), a certified copy of the foreign application must be filed within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application, except as provided in paragraphs (h) and (i) of this section. If a certified copy of the foreign application is not filed within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application, and the exceptions in paragraphs (h) and (i) of this section are not applicable, the certified copy of the foreign application must be accompanied by a petition including a showing of good and sufficient cause for the delay and the petition fee set forth in § 1.17(g). The time period in this paragraph does not apply in a design application.

(g) *Requirement for filing priority claim, certified copy of foreign application, and translation in any application.* (1) The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed within the pendency of the application and before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must also be accompanied by the processing fee set forth in § 1.17(i), but the patent will not include the priority claim unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323.

(2) The Office may require that the claim for priority and the certified copy of the foreign application be filed earlier than otherwise provided in this section:

(i) When the application is involved in an interference (see § 41.202 of this title) or derivation (see part 42 of this title) proceeding;

(ii) When necessary to overcome the date of a reference relied upon by the examiner; or

(iii) When deemed necessary by the examiner.

(3) An English language translation of a non-English language foreign application is not required except:

(i) When the application is involved in an interference (see § 41.202 of this title) or derivation (see part 42 of this title) proceeding;

(ii) When necessary to overcome the date of a reference relied upon by the examiner; or

(iii) When specifically required by the examiner.

(4) If an English language translation of a non-English language foreign application is required, it must be filed together with a statement that the translation of the certified copy is accurate.

(h) *Foreign intellectual property office participating in a priority document exchange agreement.* The requirement in paragraphs (c), (f), and (g) of this section for a certified copy of the foreign application to be filed within the time limit set forth therein will be considered satisfied if:

(1) The foreign application was filed in a foreign intellectual property office participating with the Office in a bilateral or multilateral priority document exchange agreement (participating foreign intellectual property office), or a copy of the foreign application was filed in an application subsequently filed in a participating foreign intellectual property office that permits the Office to obtain such a copy;

(2) The claim for priority is presented in an application data sheet (§ 1.76(b)(6)), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, and the applicant provides the information necessary for the participating foreign intellectual property office to provide the Office with access to the foreign application;

(3) The copy of the foreign application is received by the Office from the participating foreign intellectual property office, or a certified copy of the foreign application is filed, within the period specified in paragraph (g)(1) of this section; and

(4) The applicant files a request in a separate document that the Office obtain a copy of the foreign application from a participating intellectual property office that permits the Office to obtain such a copy if the foreign application was not filed in a participating foreign intellectual property office but a copy of

the foreign application was filed in an application subsequently filed in a participating foreign intellectual property office that permits the Office to obtain such a copy. The request must identify the participating intellectual property office and the subsequent application by the application number, day, month, and year of its filing in which a copy of the foreign application was filed. The request must be filed within the later of sixteen months from the filing date of the prior foreign application or four months from the actual filing date of an application under 35 U.S.C. 111(a), within four months from the later of the date of commencement (§ 1.491(a)) or the date of the initial submission under 35 U.S.C. 371 in an application entering the national stage under 35 U.S.C. 371, or with a petition under paragraph (e) of this section.

(i) *Interim copy.* The requirement in paragraph (f) of this section for a certified copy of the foreign application to be filed within the time limit set forth therein will be considered satisfied if:

(1) A copy of the original foreign application clearly labeled as ''Interim Copy,'' including the specification, and any drawings or claims upon which it is based, is filed in the Office together with a separate cover sheet identifying the foreign application by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, and stating that the copy filed in the Office is a true copy of the original application as filed in the foreign country (or intellectual property authority);

(2) The copy of the foreign application and separate cover sheet is filed within the later of sixteen months from the filing date of the prior foreign application or four months from the actual filing date of an application under 35 U.S.C. 111(a), or with a petition under paragraph (e) of this section; and

(3) A certified copy of the foreign application is filed within the period specified in paragraph (g)(1) of this section.

(j) *Requirements for certain applications filed on or after March 16, 2013.* If a nonprovisional application filed on or after March 16, 2013, claims priority to a foreign application filed prior to March 16, 2013, and also contains, or contained at any time, a claim to a claimed invention that has an effective filing date on or after March 16, 2013, the applicant must provide a statement to that effect within the later of four months from the actual filing date of the nonprovisional application, four months from the date of entry into the national stage as set forth in § 1.491 in an international application, sixteen months from the filing date of the prior-filed foreign application, or the date that a first claim to a claimed invention that has an effective filing date on or after March 16, 2013, is presented in the nonprovisional application. An applicant is not required to provide such a statement if the applicant reasonably believes on the basis of information already known to the individuals designated in § 1.56(c) that the nonprovisional application does not, and did not at any time, contain a claim to a claimed invention that has an effective filing date on or after March 16, 2013.

(k) *Inventor's certificates.* An applicant in a nonprovisional application may under certain circumstances claim priority on the basis of one or more applications for an inventor's certificate in a country granting both inventor's certificates and patents. To claim the right of priority on the basis of an application for an inventor's certificate in such a country under 35 U.S.C. 119(d), the applicant when submitting a claim for such right as specified in this section, must include an affidavit or declaration. The affidavit or declaration must include a specific statement that, upon an investigation, he or she is satisfied that to the best of his or her knowledge, the applicant, when filing the application for the inventor's certificate, had the option to file an application for either a patent or an inventor's certificate as to the subject matter of the identified claim or claims forming the basis for the claim of priority.

(l) *Time periods not extendable.* The time periods set forth in this section are not extendable.

Dated: March 7, 2013.

Teresa Stanek Rea,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 2013–05815 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2012–0486, FRL–9789–2]

RIN 2060–AR59

Revision to Ambient Nitrogen Dioxide Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing revisions to the deadlines established in the national ambient air quality standard (NAAQS) for nitrogen dioxide (NO_2) for the near-road component of the NO_2 monitoring network in order to implement a phased deployment approach. This approach will create a series of deadlines that will make the near-road NO_2 network operational between January 1, 2014, and January 1, 2017. The EPA is also finalizing revisions to the approval authority for annual monitoring network plans for NO_2 monitoring.

DATES: This final rule is effective March 14, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0486. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., 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 at the Revision to Ambient Nitrogen Dioxide Monitoring Requirements Docket, Docket ID No. EPA–HQ–OAR–2012–0486, EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday excluding legal holidays. The docket telephone number is (202) 566–1742. 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.

FOR FURTHER INFORMATION CONTACT: Mr. Nealson Watkins, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C304–06, Research Triangle Park, NC 27711; telephone: (919) 541–5522; fax: (919) 541–1903; email: *watkins.nealson@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

The following topics are discussed in this preamble:

I. Background
II. Changes to the Ambient NO_2 Monitoring Requirements

A. Near-Road NO_2 Monitoring Network Implementation
1. Proposed Changes
2. Public Comments
3. Conclusions on Near-Road NO_2 Monitoring Network Implementation
B. Change in Annual Monitoring Network Plan Approval Authority
1. Proposed Change
2. Public Comments
3. Conclusions on Annual Monitoring Network Plan Approval Authority
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Background

On February 9, 2010, the EPA promulgated minimum monitoring requirements for the NO_2 monitoring network in support of the revised NO_2 NAAQS (75 FR 6474). The NO_2 NAAQS was revised to include a 1-hour standard with a 98th percentile form averaged over three years and a level of 100 parts per billion (ppb), reflecting the maximum allowable NO_2 concentration anywhere in an area, while retaining the annual standard of 53 ppb.

As part of the NAAQS rulemaking, the EPA promulgated revisions to requirements for minimum numbers of ambient NO_2 monitors that included new monitoring near major roads in larger urban areas. In addition, those monitoring revisions included requirements to characterize NO_2 concentrations representative of wider spatial scales in larger urban areas (area-wide monitors), and monitors intended to characterize NO_2 exposures of susceptible and vulnerable populations. Specifically, the requirements for these minimum monitoring requirements are as follows:

The first tier of the ambient NO_2 monitoring network requires near-road monitoring.[1] There must be one microscale near-road NO_2 monitoring station in each Core Based Statistical Area (CBSA) with a population of 500,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road. An additional near-road NO_2 monitoring station is required at a second location of expected maximum hourly concentrations for any CBSA with a population of 2,500,000 or more persons, or in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater Annual Average Daily Traffic (AADT). Based upon 2010 census data and data maintained by the U.S. Department of Transportation Federal Highway Administration on the most heavily trafficked roads in the U.S. *(http://www.fhwa.dot.gov/policyinformation/tables/02.cfm),* approximately 126 near-road NO_2 sites are required within 103 CBSAs nationwide.

The second tier of the NO_2 minimum monitoring requirements is for area-wide NO_2 monitoring.[2] There must be one monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of expected highest NO_2 concentrations representing the neighborhood or larger spatial scales. These NO_2 monitors are referred to as area-wide monitors. Based on 2010 census data, approximately 52 area-wide NO_2 sites are required within 52 CBSAs.

The third tier of the NO_2 minimum monitoring requirements is for the characterization of NO_2 exposure for susceptible and vulnerable populations.[3] The EPA Regional Administrators, in collaboration with states, must identify a minimum of 40 additional NO_2 monitoring stations nationwide, in addition to the above minimum monitoring requirements for near-road and area-wide monitors, primarily focusing on siting these monitors in locations to protect susceptible and vulnerable populations.

The 2010 NO_2 NAAQS revision required states to submit a plan for establishing all required NO_2 monitoring sites to the EPA Administrator by July 1, 2012. The rule also required all required monitoring stations to be operational by January 1, 2013.

II. Changes to the Ambient NO_2 Monitoring Requirements

This rulemaking will result in the following actions: (1) A change to the dates by which required near-road NO_2 monitors will need to be identified in state Annual Monitoring Network Plans; (2) a change to the dates by which required near-road NO_2 monitors shall be operational; and (3) a shift in the authority to approve NO_2 monitoring plans from the EPA Administrator to the EPA Regional Administrators.

A. Near-Road NO_2 Monitoring Network Implementation

We are finalizing a phased implementation approach, as proposed (77 FR 64244), to allow more time for states to establish the required near-road NO_2 monitors on a schedule consistent with available resources. No changes are being made with regard to the implementation timing requirements for area-wide monitoring and for monitoring to characterize NO_2 exposures for susceptible and vulnerable populations.

1. Proposed Changes

In consideration of the limited availability of state and federal resources to implement all required near-road NO_2 sites by 2013, the EPA proposed to change the dates by which required near-road NO_2 monitors are to be identified in annual monitoring network plans and physically established. The EPA proposed a phased implementation approach, where subsets of the required near-road NO_2 monitors will be funded and become operational over the course of multiple years. Although the requirement to install these monitors is not dependent on the availability of federal funds, the EPA believes that it will be able to identify sufficient grant funding over time to support this phase-in approach, which would allow states to ultimately complete the near-road network with federally supplied funds.

The EPA proposed the phased implementation for near-road NO_2 monitors as follows:

(a) For each CBSA with population of 1,000,000 or more persons, one near-road monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2013, and that monitor shall be operational by January 1, 2014.

(b) For each CBSA that is required to have two near-road monitors (either because the CBSA has a population of 2,500,000 or more persons or any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts), the second near-road monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2014, and that monitor shall be operational by January 1, 2015.

[1] See 40 CFR part 58, Appendix D, section 4.3.2.

[2] See 40 CFR part 58, Appendix D, section 4.3.3.

[3] See 40 CFR part 58, Appendix D, section 4.3.4.

(c) For each CBSA having a population of at least 500,000 or more persons (but less than 1,000,000), one near-road NO_2 monitor shall be reflected in the state Annual Monitoring Plan submitted July 1, 2016, and the monitor shall be operational by January 1, 2017.

2. Public Comments

The EPA received comments from six states and multi-state representative groups and one citizen supporting the proposed revisions to the schedule for implementing near-road NO_2 monitors. For example, the Northeast States for Coordinated Air Use Management (NESCAUM) stated it supports ''* * * the proposed changes to the NO_2 near-road monitoring network deployment schedule. The proposed phase-in and additional time is consistent with what the Clean Air Scientific Advisory Committee's (CASAC's) Ambient Air Monitoring and Methods Subcommittee recommended to EPA * * *.'' The National Association of Clean Air Agencies (NACAA) stated that it ''* * * supports the Proposed Revision and commends EPA for responding to the recommendations of state and local agencies to implement a phased approach to deployment of the NO_2 near-roadway network via rulemaking.''

The EPA received one comment from a public citizen against the proposed revisions to the implementation schedule. The citizen commenter who objected to the proposed revision stated that the proposed action would lead to a trend in which the EPA will ''* * * continuously revise the deadline, as there will always be funding issues in our current economy.'' The commenter goes on to note that postponing network deployment may also be misinterpreted to mean the agency is minimizing the priority for near-road NO_2 monitoring.

In response, the EPA notes that there will always be a need to balance monitoring objectives and requirements with available resources. Currently, there is a greater strain on federal, state, and local air monitoring resources than there has been during the recent past. This fact is articulated by multiple states and multi-state groups in their public comments on the proposed rulemaking, all of whom support the proposed revisions. For example, NACAA, which represents air pollution control agencies in 43 states, the District of Columbia, four territories, and 116 metropolitan areas, commented that ''* * * state and local agencies need additional, adequate federal funding in order to move forward with new monitoring requirements and continue to operate and maintain existing monitoring networks * * *''. NACAA goes on to state that installing and operating a new network such as the near-road NO_2 network ''* * * requires the purchase of new equipment; installation of new sites; and additional staff, operation, and maintenance costs at a time when state and local agencies are already struggling with significant budget and staffing shortfalls.''

The EPA has recognized the reality of state and local air agency funding and resource shortfalls. The EPA remains committed to near-road monitoring, but recognizes that the shift to near-road monitoring involves increased work and resource demands for site selection and implementation. The agency believes that the phased approach is the best solution to match the forecasted availability of federal funding, which will have to occur over multiple years, to allow the implementation of the required near-road NO_2 network. However, as noted above, while the EPA is considering the availability of resources in establishing these schedules, these monitoring requirements are not contingent on the future availability of federal resources.

3. Conclusions on Near-Road NO_2 Monitoring Network Implementation

The EPA has concluded, upon consideration of public comments, that the revisions to the dates that states must submit a plan for establishing all required near-road NO_2 monitors sites to the EPA and the dates by which those required near-road NO_2 monitors must be operational will be finalized as proposed. As such, near-road NO_2 monitors shall be established as follows:

(a) In each CBSA having 1,000,000 or more persons, one near-road NO_2 monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2013, and that monitor shall be operational by January 1, 2014.

(b) In each CBSA required to have two near-road NO_2 monitors (i.e., any CBSA with a population of 2,500,000 or more persons, or any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts), a second near-road NO_2 monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2014, and that monitor shall be operational by January 1, 2015.

(c) In each CBSA having 500,000 or more persons (but less than 1,000,000), one near-road NO_2 monitor shall be reflected in the state Annual Monitoring Plan submitted July 1, 2016, and that monitor shall be operational by January 1, 2017.

The EPA estimates, under these new revisions, that 52 near-road NO_2 monitors would be operational by January 1, 2014, in CBSAs having 1,000,000 or more persons; an estimated 23 additional near-road NO_2 monitors would be operational by January 1, 2015, in any CBSA having 2,500,000 or more persons, or in those CBSAs with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts; and an estimated 51 additional near-road NO_2 sites would be operational by January 1, 2017, in those CBSAs having a population between 500,000 and 1,000,000 persons.

No changes are being made with regard to the implementation timing requirements for area-wide monitoring and for monitoring to characterize NO_2 exposures for susceptible and vulnerable populations.

B. Change in Annual Monitoring Network Plan Approval Authority

We are finalizing revisions to regulatory language, as proposed (77 FR 64244), so that state and local air monitoring agencies shall submit annual NO_2 monitoring network plans to the EPA Regional Administrators for approval.

1. Proposed Change

The EPA proposed to amend the regulatory text in 40 CFR 58.10(a)(5) so that state and local air monitoring agencies are required to submit their NO_2 monitoring network plans to their respective EPA Regional Administrator instead of the EPA Administrator for approval. This change would make the NO_2 monitoring network plan submittals consistent with the requirements for submittal of Annual Monitoring Network Plans for ozone, carbon monoxide, sulfur dioxide, particulate matter, and lead to EPA Regional Administrators.

2. Public Comments

The EPA received comments from five state and multi-state representative groups and one citizen supporting the proposed revisions to shift the approval authority of state Annual Monitoring Network Plans from the EPA Administrator to the EPA Regional Administrators. For example, the Wisconsin Department of Natural Resources supported this revision as this change will allow ''* * * for NO_2 monitoring network plans to be incorporated into Annual Network Plans reducing the time and resources required to prepare these plans [independent of other pollutant plans].'' The EPA did not receive any comments against the proposed changes to NO_2

monitoring network plan approval authority.

3. Conclusions on Annual Monitoring Network Plan Approval Authority

The EPA has concluded, upon consideration of public comments, that the revisions to the regulatory language in 40 CFR 58.10(a)(5) shall be finalized as they were proposed. As such, states shall submit Annual Monitoring Network Plans for NO_2 monitoring to the EPA Regional Administrators for approval.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations 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 is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). The proposed amendments to revise ambient NO_2 monitoring requirements do not add any information collection requirements beyond those imposed by the existing NO_2 monitoring requirements.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of 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; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO_2 monitors and does not add any new requirements. Therefore, it will not present a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

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 one year. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO_2 monitors and does not add any new requirements. This action imposes no new enforceable duty on any state, local or tribal governments or the private sector. Furthermore, the expected costs associated with the monitoring requirements are not expected to exceed $100 million in the aggregate for any year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no enforceable duty on any small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. 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. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO_2 monitors and does not add any new requirements. 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 final rule imposes no requirements on tribal governments. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO_2 monitors and does not add any new requirements. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish or alter an environmental standard intended to mitigate health or safety risks, but merely allows additional time for state and local air monitoring agencies to install and begin operating a subset of required NO_2 monitors.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO_2 monitors and does not add any new requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note) directs the 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 the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, this action is not subject to the NTTAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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.

The 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 does not affect the level of protection provided to human health or the environment. This rule will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO_2 monitors and does not add any new requirements or change any existing emission or ambient concentration standards.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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). This rule will be effective March 14, 2013.

List of Subjects in 40 CFR Part 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: March 7, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons discussed in the preamble, the EPA amends 40 CFR part 58 to read as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

■ 1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

Subpart B [AMENDED]

■ 2. Section 58.10 is amended by revising paragraph (a)(5) and paragraph (b)(12) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

* * * * *

(a) * * *

(5)(i) A plan for establishing or identifying an area-wide NO_2 monitor, in accordance with the requirements of Appendix D, section 4.3.3 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2012. The plan shall provide for these required monitors to be operational by January 1, 2013.

(ii) A plan for establishing or identifying any NO_2 monitor intended to characterize vulnerable and susceptible populations, as required in Appendix D, section 4.3.4 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2012. The plan shall provide for these required monitors to be operational by January 1, 2013.

(iii) A plan for establishing a single near-road NO_2 monitor in CBSAs having 1,000,000 or more persons, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2013. The plan shall provide for these required monitors to be operational by January 1, 2014.

(iv) A plan for establishing a second near-road NO_2 monitor in any CBSA with a population of 2,500,000 or more persons, or a second monitor in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2014. The plan shall provide for these required monitors to be operational by January 1, 2015.

(v) A plan for establishing a single near-road NO_2 monitor in all CBSAs having 500,000 or more persons, but less than 1,000,000, not already required by paragraph (a)(5)(iv) of this section, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2016. The plan shall provide for these monitors to be operational by January 1, 2017.

* * * * *

(b) * * *

(12) The identification of required NO_2 monitors as near-road, area-wide, or vulnerable and susceptible population monitors in accordance with Appendix D, section 4.3 of this part.

* * * * *

■ 3. Section 58.13 is amended by revising paragraph (c) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(c) The NO_2 monitors required under Appendix D, section 4.3 of this part must be physically established and operating under all of the requirements of this part, including the requirements of appendices A, C, D, and E to this part, no later than:

(1) January 1, 2013, for area-wide NO_2 monitors required in Appendix D, section 4.3.3;

(2) January 1, 2013, for NO_2 monitors intended to characterize vulnerable and susceptible populations that are required in Appendix D, section 4.3.4;

(3) January 1, 2014, for an initial near-road NO_2 monitor in CBSAs having 1,000,000 million or more persons that is required in Appendix D, section 4.3.2;

(4) January 1, 2015, for a second near-road NO_2 monitor in CBSAs that have a population of 2,500,000 or more persons or a second monitor in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts that is required in Appendix D, section 4.3.2;

(5) January 1, 2017, for a near-road NO_2 monitor in CBSAs having 500,000 or more persons, but less than 1,000,000, not already required by paragraph (c)(4) of this section, that is required in Appendix D, section 4.3.2.

* * * * *

[FR Doc. 2013–05939 Filed 3–13–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382, 383, 390, 391, 395, 396

[Docket No. FMCSA–2012–0378]

RIN 2126–AB58

Transportation of Agricultural Commodities

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA promulgates the regulatory exemptions for the ''transportation of agricultural commodities and farm supplies'' and for ''covered farm vehicles'' and their drivers enacted by sections 32101(d) and 32934, respectively, of the Moving Ahead for Progress in the 21st Century Act (MAP–21). Although prior statutory exemptions involving agriculture are unchanged, some of these exemptions overlap with MAP–21 provisions. In these cases, regulated entities will be able to choose the exemption, or set of exemptions, under which to operate. They must, however, comply fully with the terms of each exemption they claim.

DATES: *Effective date:* This rule is effective March 14, 2013.

Compliance dates: The Motor Carrier Safety Assistance Program (MCSAP) requires participating States to adopt regulations compatible with 49 CFR Parts 390–397 to remain eligible for MCSAP grants [49 CFR 350.201(a)]. Section 350.331(d) requires participating States to adopt compatible regulations as soon as practicable after the effective date of any newly adopted or amended FMCSA regulation, but no later than 3 years after that date. The amendments to Parts 390, 391, 395, and 396 made by this rule must therefore be adopted by March 14, 2016.

Although the Commercial Driver's License (CDL) program in 49 CFR part 383 is not covered by the MCSAP regulations, the States are required by 49 U.S.C. 31314 (as implemented by 49 CFR part 384) to comply with the requirements of Part 383 in order to avoid the withholding of certain Federal-aid highway funds. Consistent with FMCSA's previous practice, States must adopt the amendment made by this rule by March 14, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Driver and Carrier Operations, (202) 366–4325 or *MCPSD@dot.gov*, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

Executive Summary
Acronyms and Abbreviations
Legal Basis for the Rulemaking
Background
Current Rules and MAP–21 Exemptions: Comparison and Discussion
Section-by-Section Analysis of the Final Rule
Regulatory Analyses

Executive Summary

Purpose of the Rule and Summary of Major Provision

This rule promulgates Congressionally-mandated exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) for certain agricultural operations.

Section 32101(d) of MAP–21, implemented as 49 CFR 395.1(k), expands an hours-of-service (HOS) exemption for farm-related operations during the planting and harvesting season (as defined by each State) that has been in effect since 1995. Under the new provision, drivers transporting agricultural commodities within a 150 (instead of 100) air-mile radius of the farm or source of the commodities are exempt from the HOS rules. Also exempt are retailers delivering farm supplies for agricultural purposes within a 150 (instead of 100) air-mile radius of their distribution point to a farm or other place where the supplies will be used, and wholesalers delivering farm supplies within the same radius to a retailer, farm, or place where they will be used.

Section 32934 of MAP–21 created a new set of exemptions for ''covered farm vehicles'' (CFVs) and their drivers. The definition of a CFV is discussed in the Background section below. Briefly, CFVs and their drivers are exempt from the commercial driver's license (CDL) and drug and alcohol testing regulations; the medical qualification requirements; the hours of service limits; and vehicle inspection, repair and maintenance rules. Vehicles transporting placardable quantities of hazardous materials are not eligible for these exemptions. The States will have to adopt these exemptions into their own laws and regulations within 3 years in order to avoid the withholding of certain Federal grant funds.

Costs and Benefits

The benefits of the rule will take the form of reduced expenditures in the agricultural sector. Neither the benefits nor the costs of the exemptions can be estimated at this time. There will also be costs associated with re-training Federal and State enforcement personnel on the sometimes intricate details of the exemptions.

Acronyms and Abbreviations

CDL Commercial Driver's License
CFV Commercial Farm Vehicle
CMV Commercial Motor Vehicle
DOT Department of Transportation
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
HM Hazardous Materials
HOS Hours of Service
MAP–21 Moving Ahead for Progress in the 21st Century Act
MCSAP Motor Carrier Safety Assistance Program
NHS National Highway System

Legal Basis for the Rulemaking

This rule is based on sections 32101(d) and 32934 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, 778, 830, July 6, 2012).

Section 32101(d) expanded both the scope and the geographical reach of an hours-of-service (HOS) exemption enacted by Sec. 345(a)(1) of the National Highway System (NHS) Designation Act of 1995 [Pub. L. 104–59, 109 Stat. 568, 613, Nov. 28, 1995] and redesignated as Sec. 229 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106–159, 113 Stat. 1748, 1773, Dec. 9, 1999] by Sec. 4115 of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744, Aug. 10, 2005]. As so redesignated, section 229 of MCSIA was amended by sections 4130–4132 of SAFETEA–LU [119 Stat. 1743–1744].

Section 345(a)(1) of the NHS Designation Act created an exemption from the HOS regulations for drivers transporting agricultural commodities or farm supplies for agricultural purposes within a 100 air-mile radius of the source of the commodities or the distribution point for the farm supplies, provided the transportation occurred during the planting and harvesting seasons, as determined by each State. Pursuant to the legislative history of the provision, FMCSA interpreted Sec. 345(a)(1) as exempting only drivers transporting farm supplies from a farm retailer to the ultimate consumer, typically a farmer.

Section 32101(d) supersedes that interpretation by expanding the exemption to include drivers

transporting farm supplies from a wholesale or retail distribution point to a farm or other location where the supplies are intended to be used, and from a wholesale distribution point to a retail distribution point. It also extended the geographical radius of the exemption from 100 to 150 air-miles.

Section 32934 of MAP–21 created a series of exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) for ''covered farm vehicles'' (CFVs), as defined therein and explained in the Background section below. Briefly, a CFV and its driver are exempt from any requirement relating to (1) commercial driver's licenses (CDLs) or drug and alcohol testing established under 49 U.S.C. chapter 313; (2) medical certificates established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 313; and (3) HOS and vehicle inspection, repair, and maintenance established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 315.

FMCSA must consider the ''costs and benefits'' of a rule before adopting it (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

This rule simply adopts jurisdictional limitations enacted by Congress, and FMCSA therefore finds ''good cause'' under 5 U.S.C. 553 to promulgate this rule as a final rule because prior notice and comment would be ''unnecessary'' under the circumstances. The Agency also finds ''good cause'' to make the rule effective upon publication because it ''relieves a restriction'' [49 U.S.C. 553(d)(1)].

Background

FMCSA and its predecessor agencies exercised their discretion to adopt a number of exemptions related to agricultural operations. Congress has also enacted statutory exemptions concerning agricultural operations. To understand the impact of the amendments promulgated in this final rule, the exemptions already in effect—both discretionary and statutory—must first be described. We will then compare the MAP–21 provisions to the current exemptions.

To be eligible for MCSAP grants, participating States agree to adopt as State law motor carrier safety statutes and regulations that are ''compatible'' with FMCSA's regulations. For State regulations applicable to interstate commerce, ''compatible'' means identical to or having the same effect as the Federal standards; for regulations applicable to intrastate commerce, ''compatibility'' includes limited variation from Federal standards (as specified in 49 CFR 350.341). To retain MCSAP funding, participating States are required to adopt not only Federal regulatory requirements but also Federal exemptions, both discretionary and statutory. Similar rules apply to the CDL regulations, as explained in the **DATES** section above. States participating in MCSAP and the CDL program must adopt all of the exemptions promulgated today within 3 years of the effective date of this rule, or they will be ineligible to receive certain Federal funds.

Current Discretionary Exemptions

Part 383

The regulations in 49 CFR Part 383 (Commercial Driver's License Standards; Requirements and Penalties) include a number of exemptions. The applicability provisions in § 383.3 allow, but do not require, the States to exempt from the mandate to obtain a CDL, operators of a farm vehicle that would otherwise qualify as a ''commercial motor vehicle'' requiring a CDL, provided the farm vehicle is (1) controlled and operated by a farmer, including operation by employees or family members; (2) used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm; (3) not used in the operations of a common or contract motor carrier; and (4) used within 241 kilometers (150 miles) of the farmer's farm [49 CFR 383.3(d)(1)]. Because the term ''farmer'' is not defined in part 383, the definition in 49 CFR 390.5 applies:[1] ''Farmer'' means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which (1) are owned by that person or (2) are under the direct control of that person. Similarly, because the term ''operators of a farm vehicle'' used in § 383.3(d)(1) is not defined in § 383.5, the nearest equivalent term—''farm vehicle driver,'' as defined in § 390.5—is applicable. A ''farm vehicle driver'' is a person who drives only a commercial motor vehicle that is—(1) controlled and operated by a farmer as a private motor carrier of property; (2) being used to transport either (a) agricultural products or (b) farm machinery, farm supplies, or both, to or from a farm; (3) not being used in the operation of a for-hire motor carrier; (4) not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with § 177.823 of title 49, Code of Federal Regulations, and (5) being used within 150 air-miles of the farmer's farm [49 CFR 390.5].

It is important to note that, although the exemption authorized by § 383.3(d)(1) and the definition of a ''farm vehicle driver'' in § 390.5 are very similar, they are not identical. While § 383.3(d)(1) makes no mention of placardable quantities of hazardous materials (HM)—and thus appears to allow agricultural drivers transporting HM an exemption from the CDL requirement—the definition of a ''farm vehicle driver'' in § 390.5 excludes drivers who meet the other 4 elements of that definition if they are carrying placardable quantities of HM. In other words, ''operators of a farm vehicle'' under § 383.3(d)(1), whom FMCSA treats as equivalent to ''farm vehicle drivers'' under § 390.5, are not eligible for the CDL exemption if they transport placardable quantities of HM.

A driver who is not required to hold a CDL as a result of § 383.3(d)(1) is also exempt from the FMCSA drug and alcohol testing regulations [*see* 49 CFR 382.103(a)(1)].

Section 383.3(e) allows Alaska to issue restricted CDLs to applicants who do not comply with the test procedures in Subpart H of Part 383. This partial exemption is utilized by few, if any, drivers for agricultural operations.

Section 383.3(f) allows States, under certain conditions, to issue restricted CDLs to employees of 4 farm-related service industries, specifically (1) agri-chemical businesses; (2) custom harvesters; (3) farm retail outlets and suppliers; and (4) livestock feeders.

Part 391

The driver qualification rules in 49 CFR part 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors) also include discretionary exemptions.

Section 391.2 sets forth 3 agriculture-related exemptions. (It should be noted, however, that drivers otherwise exempt under § 391.2 remain subject to the rules in § 391.15(e) dealing with disqualification for violating a prohibition on texting while driving a CMV.)

Section 391.2(a) exempts from the rules in Part 391 the driver of a CMV controlled and operated by a person engaged in custom harvesting, provided the CMV is used to transport (1) farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or (2) custom-harvested crops to storage or market.

Section 391.2(b) exempts from the rules in Part 391 the driver of a CMV controlled and operated by a beekeeper engaged in the seasonal transportation

[1] Pursuant to the introductory clause of § 390.5, the definitions in that section apply ''Unless specifically defined elsewhere in this subchapter'' (i.e., subchapter B of chapter III of subtitle B of title 49, Code of Federal regulations, which covers 49 CFR Parts 350–399). Because ''farmer'' is not defined in Part 383, the definition of that term in § 390.5 is therefore applicable.

of bees. The exemption does not apply to a beekeeper's transportation of honey.

Section 391.2(c) exempts from the rules in Part 391 a ''farm vehicle driver,'' as defined in § 390.5, who drives a straight truck (but not an articulated vehicle). As indicated above, a ''farm vehicle driver'' is a person who drives only a CMV that is—(1) controlled and operated by a farmer as a private motor carrier of property; (2) being used to transport either (a) agricultural products or (b) farm machinery, farm supplies, or both, to or from a farm; (3) not being used in the operation of a for-hire motor carrier; (4) not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with § 177.823 of title 49, Code of Federal Regulations, and (5) being used within 150 air-miles of the farmer's farm.

Although the broad exemption in § 391.2(c) for drivers of straight trucks is not applicable to drivers of articulated vehicles, § 391.2(c) cross-references § 391.67, which sets forth a shorter list of exemptions available to farm vehicle drivers of articulated CMVs. Section 391.67 exempts a ''farm vehicle driver,'' as defined in § 390.5, who is also at least 18 years of age and drives an articulated CMV, from certain general qualification standards in § 391.11, specifically § 391.11(b)(1), (6), and (8); this driver is also exempt from Subparts C, D, and F of Part 391.

Part 395

The HOS regulations in 49 CFR Part 395 include a variety of exceptions that could apply to agricultural operations, though the provisions described below were not intended specifically for that purpose.

Section 395.1(e)(1) allows drivers operating within a 100 air-mile radius of their normal work-reporting location to dispense with normal records of duty status (RODS, often called logs), provided they meet certain other requirements.

Section 395.1(e)(2) allows drivers operating vehicles that do not require a CDL within a 150 air-mile radius of their normal work reporting location to drive within a 16 hour window after coming on duty (instead of the normal 14-hour driving window) 2 days per week, providing other limits and recordkeeping requirements are met.

Section 395.1(h) includes special HOS limits for drivers operating in Alaska.

Section 395.1(i) includes special HOS exemptions for drivers operating in Hawaii.

Current Statutory Exemptions

NHS Designation Act. Section 345(a)(1) of the NHS Designation Act provided that the regulations regarding maximum driving and on-duty time prescribed by the Department of Transportation under 49 U.S.C. 31136 and 31502 do not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius of the source of the commodities or the distribution point for the farm supplies and the transportation takes place during the planting and harvesting seasons within that State, as determined by the State. The terms ''agricultural commodities'' and ''farm supplies for agricultural purposes'' were defined by section 4130(c) of SAFETEA–LU and enacted as section 229(e) of MCSIA.

The agricultural exemption from the hours-of-service (HOS) regulations is codified in 49 CFR 395.1(k) and the statutory definitions of ''agricultural commodities'' and ''farm supplies for agricultural purposes'' are codified in § 395.2.

MAP–21. MAP–21 includes two different provisions applicable to agricultural operations. Section 32101(d) enacted amendments to the HOS exemption originally adopted in the NHS Designation Act, while Sec. 32934 promulgated a set of exemptions that covered many provisions of the FMCSRs.

Section 32101(d). Section 32101(d) amended the NHS Designation Act exemption in two ways. First, it extended the geographical reach of the exemption from 100 to 150 air-miles of the source of the agricultural commodities or the distribution point of farm supplies for agricultural purposes. Second, it extended the exemption to wholesalers of farm supplies. As amended, the 150 air-mile radius is now measured from a wholesale to a retail distribution point, or from a wholesale or retail distribution point to a farm or other place where the supplies are intended to be used.

Section 32934. The exemptions created by Sec. 32934 are available only to ''covered farm vehicles'' (CFVs) and their operators. The CFV definition is complex, and the resulting exemptions sometimes overlap or conflict with previous exemptions. The inconsistencies will be discussed below.

In order to make the implementing regulations more readable, FMCSA has rephrased them. The statutory definition of a ''covered farm vehicle'' is provided at Sec. 32934(c) of MAP–21.

A ''covered farm vehicle'' (CFV), as defined in Sec. 32934, is a straight truck or articulated vehicle (e.g., a large pickup, a truck pulling a trailer, sometimes a standard tractor semitrailer combination) registered in a State that is used by the owner or operator of a farm or ranch (or an employee or family member of a farm or ranch owner or operator) to transport agricultural commodities, livestock, machinery or supplies, provided the truck has a license plate or other designation issued by the State of registration that allows law enforcement personnel to identify it as a farm vehicle. Although a CFV may not be used in for-hire motor carrier operations, a share-cropper's use of a vehicle to transport the landlord's share of the crops may not be treated as a for-hire operation. If the CFV has a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR), whichever is greater, of 26,001 pounds or less, it may take advantage of the CFV exemption described below while operating anywhere in the United States. A CFV with a GVW or GVWR, whichever is greater, above 26,001 pounds, may travel anywhere in the State of registration or across State borders within 150 air miles of the home farm or ranch—but the vehicle would lose its status as a CFV and the corresponding exemptions if it exceeded these geographical limits. In large States like Texas or California, the operator of a CFV with a GVW or GVWR above 26,001 pounds will be able to travel much more than 150 air-miles within the State. However, if the CFV crosses a State line, its exempt operations under this MAP–21 provision are limited to a 150 air-mile radius from the home farm or ranch.

While Sec. 32934 identifies the Federal rules from which CFVs and their drivers are exempt, it does so in statutory terms that would be unfamiliar to most drivers and motor carriers, and difficult to use for compliance or enforcement. FMCSA has therefore chosen to promulgate the regulatory equivalents of the statutory terms.

Current Rules and MAP–21 Exemptions: Comparison and Discussion

Part 383

The option granted the States in 49 CFR 383.3(d)(1) to exempt certain operators of a farm vehicle from the CDL and drug and alcohol testing regulations is very similar, but not identical, to the CDL exemption created by MAP–21. While the exemption in § 383.3(d)(1) is available to the operator of a farm vehicle controlled and operated by a

farmer, the CFV definition includes a ranch owner. Similarly, § 383.3(d)(1) is limited to farmers transporting agricultural products, farm machinery or farm supplies, while the CFV definition also includes livestock. The exemption allowed by § 383.3(d)(1), although narrower than the MAP–21 exemption, is currently in effect in most (if not all) States and immediately available to designated farmers. Removing that exemption and requiring States to adopt the new exemption would include a 3 year implementation period during which there may be periods that farmers are not, in State statutes, provided any exemption. FMCSA is therefore retaining § 383.3(d)(1) at this time.

The restricted CDLs allowed in Alaska [§ 383.3(e)] and for certain farm-related service industries [§ 383.3(f)] have been partially overtaken by MAP–21. Drivers of CFVs in Alaska and livestock feeders anywhere who meet the conditions set forth in the definition of a CFV in 49 CFR 390.5 would be completely exempt from the CDL requirement—and thus from drug and alcohol testing, which is otherwise applicable to these limited exemptions in Part 383. However, drivers for agri-chemical businesses, custom harvesters, and farm retail outlets and suppliers would not qualify for the CFV exemptions because drivers of CFVs, by definition, must be farm owners or operators, or their employees or family members. Sections 383.3(e) and (f) are being retained because they remain available to drivers of vehicles that do not qualify as CFVs.

Part 391

Section 391.2(a), which provides an exception from Part 391 for custom harvesters, is also being retained because those operations do not meet the MAP–21 definition of a CFV, particularly the requirement that the vehicle be operated by the owner or operator of a farm or ranch. Custom harvesters move from one farm to another to harvest grain but are not the owner or operator of a particular farm. In any case, § 391.2(a) is broader than Sec. 32934, which provides an exemption only from Subpart E (Physical Qualifications and Examinations) of Part 391, not from all of Part 391.

Section 391.2(b), which provides an exception from Part 391 for a beekeeper using a CMV for the seasonal transportation of bees, is also retained. Like custom harvesters, beekeepers do not meet the definition of a CFV because they rarely operate a farm or ranch; they typically place beehives on marginal farm or ranch land owned or operated by someone else. Section 391.2(b) also provides an exception, not just from Subpart E of Part 391, but from the entire Part.

Section 391.2(c) provides an exception from all of Part 391, apart from the rules on texting, for a ''farm vehicle driver'' (as defined in § 390.5) of a straight truck. On the other hand, Sec. 32934(a)(3) of MAP–21 exempts CFV drivers only from ''any requirement relating to medical certificates,'' which corresponds to Subpart E of Part 391. Section 391.2(c) is substantially broader than Sec. 32934 and is therefore being retained. Many ''farm vehicle drivers'' of straight trucks could qualify as CFV drivers, and *vice versa,* but the two provisions are not identical. For example, drivers of articulated CFVs or CFVs operating beyond a radius of 150 air-miles from the home farm or ranch would not qualify for the exemption in § 391.2(c) because only straight trucks are eligible and then only when used within 150 air-miles of the farmer's farm.

Section 391.2(c) also refers to § 391.67, which provides a more limited, but still extensive, set of exceptions for ''farm vehicle drivers'' of articulated vehicles. Under § 391.67, a ''farm vehicle driver'' who is at least 18 years old and drives an articulated CMV is not subject to Subparts C, D, and F of Part 391. Subpart C covers employment applications (§ 391.21), investigations of drivers' safety performance history for the prior 3 years (§ 391.23), the annual review of a driver's record with the state driver licensing agency (§ 391.25), and the requirement for drivers to submit annually, and for carriers to review, a list of all traffic convictions during the preceding year (§ 391.27). Subpart D requires motor carriers to subject newly-hired drivers to road tests (§ 391.31), though certain equivalents are also acceptable (§ 391.33). Subpart F requires motor carriers to maintain a qualification file on each driver it employs (§ 391.51) as well as the records relating to its safety performance history investigations undertaken pursuant to § 391.23 (§ 391.53). Any motor carrier that uses an instructor to train longer combination vehicle (LCV) drivers must maintain a qualification file on each instructor (§ 391.55). Finally, § 391.67 excepts covered farm vehicle drivers from § 391.11(b)(1), requiring them to be at least 21 years old (§ 391.67(a)). While MAP–21 exempts the driver of a CFV from ''any requirement relating to medical certificates'' [Sec. 32934(a)(3)], which corresponds to Subpart E of Part 391, § 391.67 excepts farm vehicle drivers of articulated vehicles from many requirements *except* those relating to medical qualifications. Section 391.67 is thus quite different from the CFV exemption. Determining the applicability of these exceptions and exemptions will require a careful factual evaluation of the operations in question.

Part 395

Sections 395.1(e)(1) and (2) are currently available to many kinds of commercial motor vehicle drivers. Some of them may be farm or ranch operators—one of the elements in the definition of a CFV—but many are drivers for general trucking operations that are not eligible for the CFV exemption.

Drivers in Alaska and Hawaii who are currently operating under § 395.1(h) and (i) may continue to do so, but some of them may now be eligible for the MAP–21 exemptions.

Section-by-Section Description of Final Rule

Part 382 is amended by adding ''covered farm vehicle'' drivers to the list of exceptions from the drug and alcohol testing requirements in § 382.103(d). This amendment has preemptive effect pursuant to 49 U.S.C. 31306(g), which provides that ''[a] State or local government may not prescribe or continue in effect a law, regulation, standard, or order that is inconsistent with the regulations prescribed under this section. Although States must comply with this rule, the change to Part 382 is self-executing in the sense that a person exempt from the requirement to obtain a CDL, as provided by this rule, is also exempt from drug and alcohol testing, since testing is required only for CDL holders.

Part 383 is amended by adding paragraph (h) to § 383.3 explaining that the CDL requirements do not apply to a CFV driver.

Part 390 is amended by adding the definition of a ''covered farm vehicle'' to the list of definitions in § 390.5. The exemptions for ''covered farm vehicles'' and their drivers are codified as § 390.39(a). Section 390.39(b)(1) explains that MCSAP funds may not be withheld merely because a State exempts CFVs from State requirements relating to the operation of that vehicle. Section 390.39(b)(2) explains that CFVs transporting placardable quantities of hazardous materials (HM) are not eligible for the exemptions in § 390.39(a). This provision is based on FMCSA's interpretation of Sec. 32934(b)(2) of MAP–21. As promulgated by § 390.39(b)(1) of this rule, Sec. 32934(b)(1) of MAP–21 clearly prohibits the withholding of MCSAP funds from

States that exempt CFVs ''from *any State requirement* relating to the operation of that vehicle'' (emphasis added). However, because Sec. 32934(b)(2) makes Sec. 32934(b)(1) inapplicable to CFVs transporting placardable quantities of HM, it thus authorizes FMCSA to withhold MCSAP funds from States that exempt such CFVs ''from *any State requirement* relating to the operation of that vehicle,'' including the exemptions otherwise available to CFVs under Sec. 32934(a).

Part 391 is amended by adding paragraph (d) to the general exceptions in § 391.2. Paragraph (d) describes the exemptions applicable to drivers of ''covered farm vehicles.''

Part 395 is amended by revising the provision on ''agricultural operations'' in § 395.1(k) to include the changes made by Sec. 32101(d) and by adding new § 395.1(s) to exempt drivers of ''covered farm vehicles'' from the HOS regulations.

Part 396 is amended by adding paragraph (c) to § 396.1, Scope, to exempt drivers of ''covered farm vehicles'' from the regulations on inspection, repair, and maintenance.

Regulatory Analyses

Regulatory Planning and Review

FMCSA has determined that this action is not a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), and DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). Neither the benefits nor the costs of this rule can be reliably estimated. The benefits consist of reductions in the expenditures that parts of the agricultural sector of the economy would otherwise incur in order to comply with regulatory requirements from which MAP–21 provides exemptions. Both the current costs of those regulatory requirements and the value of the exemptions are unknown. In fact, the number of drivers who will qualify for the exemptions is itself unknown. Neither the benefits nor the costs of the exemptions can be estimated at this time. However, the benefits of the rule will take the form of reduced expenditures in the agricultural sector and there will be some costs associated with re-training Federal and State enforcement personnel on the sometimes intricate details of the exemptions.

Nonetheless, the Agency does not believe that the economic costs of the rule would exceed the $100 million annually, and Congressional or public interest in the rule is likely to focus on demands for its immediate publication so that the exemptions can be utilized. This rule has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because this rule promulgates jurisdictional limitations enacted by Congress, as explained in the Legal Basis section above, FMCSA has determined that it has good cause to adopt the rule without notice and comment. An RFA analysis is therefore not required. This final rule also complies with the President's memorandum of January 18, 2011, entitled ''Regulatory Flexibility, Small Business, and Job Creation'' (76 FR 3827).

Federalism (Executive Order 13132)

A rule has federalism implications 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 the States. FMCSA analyzed this rule under E.O. 13132 and has determined that it has no federalism implications.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143.1 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency has determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it does not effect a taking of private property or otherwise have taking implications.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that affects the privacy of individuals. This rule will not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

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 OMB for each collection of information they conduct, sponsor, or require through regulations. This rule does not require a new information collection. However the rule reduces by an unknown amount the information collection burden for driver physical qualifications under Part 391, HOS under Part 395, and inspection, repairs and maintenance under Part 396.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and FMCSA's *NEPA Implementing Procedures and Policy for Considering Environmental Impacts,* Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that ''[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA

lacks control and responsibility over the effects of an action, that action is not subject to this Order.'' Id. at chapter 1(D) (69 FR 9684). Because Congress limited the Agency's normal safety jurisdiction through the MAP–21 exemptions promulgated today, this rulemaking falls under chapter 1(D). Therefore, no further analysis is necessary.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 et seq.) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. This non-discretionary action is expected to fall within the CAA *de minimis* standards and is not subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA amends 49 CFR Parts 382, 383, 390, 391, 395, and 396 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for Part 382 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. Amend § 382.103 by adding paragraph (d)(4) to read as follows:

§ 382.103 Applicability.

* * * * *

(d) * * *

(4) Who operate ''covered farm vehicles,'' as defined in 49 CFR 390.5.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 3. The authority citation for Part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 4. Amend § 383.3 by adding paragraph (h) to read as follows:

§ 383.3 Applicability.

* * * * *

(h) *Exception for drivers of ''covered farm vehicles.''* The rules in this part do not apply to a driver of a ''covered farm vehicle,'' as defined in § 390.5 of this chapter.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 5. The authority citation for Part 390 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 114, 1745; sections 32101(d) and 34934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

■ 6. Amend § 390.5 by adding a definition of ''Covered farm vehicle'' in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Covered farm vehicle—

(1) Means a straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of a an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

* * * * *

■ 7. Add new § 390.39 to subpart B to read as follows:

§ 390.39 Exemptions for ''covered farm vehicles.''

(a) *Federal requirements.* A covered farm vehicle, as defined in § 390.5, including the individual operating that vehicle, is exempt from the following:

(1) Any requirement relating to commercial driver's licenses in 49 CFR Part 383 or controlled substances and alcohol use and testing in 49 CFR Part 382;

(2) Any requirement in 49 CFR Part 391, Subpart E, Physical Qualifications and Examinations.

(3) Any requirement in 49 CFR Part 395, Hours of Service of Drivers.

(4) Any requirement in 49 CFR Part 396, Inspection, Repair, and Maintenance.

(b) *State requirements*—(1) *In general.*—Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from any State requirement relating to the operation of that vehicle.

(2) *Exception.*—Paragraph (b)(1) of this section does not apply with respect to a covered farm vehicle transporting hazardous materials that require a placard.

(c) *Other exemptions and exceptions.*—The exemptions in paragraphs (a) and (b) of this section are in addition to, not in place of, the agricultural exemptions and exceptions in §§ 383.3(d)(1), 383.3(e), 383.3(f), 391.2(a), 391.2(b), 391.2(c), 391.67, 395.1(e)(1), 395.1(e)(2), 395.1(h), 395.1(i), and 395.1(k) of this chapter. Motor carriers and drivers may utilize any combination of these exemptions and exceptions, providing they comply fully with each separate exemption and exception.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 8. The authority citation for Part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 9. Amend § 391.2 by adding paragraph (d) to read as follows:

§ 391.2 General exceptions.

* * * * *

(d) *Covered farm vehicles.* The rules in part 391, Subpart E—Physical Qualifications and Examinations—do not apply to drivers of ''covered farm vehicles,'' as defined in 49 CFR 390.5.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 10. The authority citation for Part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 11. Amend § 395.1 by revising paragraph (k) and adding a new paragraph (s) to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(k) *Agricultural operations.* The provisions of this part shall not apply during planting and harvesting periods, as determined by each State, to drivers transporting

(1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

(2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

* * * * *

(s) *Covered farm vehicles.* The rules in this part do not apply to drivers of ''covered farm vehicles,'' as defined in 49 CFR 390.5.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 12. The authority citation for Part 396 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 13. Amend § 396.1 by adding a new paragraph (c) to read as follows:

§ 396.1 Scope.

* * * * *

(c) This part does not apply to ''covered farm vehicles,'' as defined in 49 CFR 390.5, or to the drivers of such vehicles.

Issued under the authority delegated in 49 CFR 1.87 on: March 8, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–05897 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XC311

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2013 and 2014 Harvest Specifications for Groundfish

Correction

In rule document 2013–04822, appearing on pages 13813–13834 in the issue of Friday, March 1, 2013, make the following correction:

On page 13822 in the heading of Table 9, the year ''2013'' is corrected read ''2014''.

[FR Doc. C1–2013–04822 Filed 3–13–13; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 78, No. 50
Thursday, March 14, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0239; Directorate Identifier 2010–SW–087–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Eurocopter Deutschland GmbH (ECD) EC 135 P1, P2, P2+, T1, T2, and T2+ helicopters equipped with a certain main transmission housing upper part. This proposed AD would require installing a corrugated washer in the middle of the main transmission filter housing upper part and modifying the main transmission housing upper part. This proposed AD is prompted by an inspection of housing upper parts that revealed the bypass inlet in the oil filter area was not manufactured in accordance with applicable design specifications. The proposed actions are intended to prevent failure of the main transmission and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by May 13, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No. 2010–0213, dated October 14, 2010 (AD 2010–0213), to correct an unsafe condition for the ECD model EC 135 and EC635 helicopters. EASA advises that a recent inspection on some housing upper parts for the main transmission FS108 revealed the bypass inlet in the oil filter area had not been manufactured in accordance with the applicable design specifications. EASA advises that this condition, if not detected and corrected, could adversely affect the oil-filter bypass function, which is essential for continued safe flight. The EASA AD requires a temporary modification of the main transmission housing upper part by installing a corrugated washer, and then a ''rework'' of the oil filter area to bring the affected parts within the applicable design specifications.

FAA's Determination

These helicopters have been approved by the aviation authority of the Republic of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Related Service Information

ECD has issued Alert Service Bulletin (ASB) ASB EC135–63A–017, Revision 0, dated October 11, 2010 (EC135–63A–017), which specifies removing the oil filter element and installing a corrugated washer. EC135–63A–017 also specifies reworking the affected filter housing upper part at the next repair or major overhaul of the main transmission, no later than 4,000 flight

hours after receipt of the service bulletin. EASA classified this ASB as mandatory and issued AD 2010–0213 to ensure the continued airworthiness of these helicopters.

We have also reviewed ZF Luftfahrttechnik GmbH Service Instruction No. EC135FS108–1659–1009, dated September 14, 2010, which specifies procedures for repairing the main transmission upper housing, and includes dimensions and tolerances for machining the housing upper part.

Proposed AD Requirements

This proposed AD would require compliance with specified portions of the manufacturer's service information. This proposed AD would require:

- Within three months, installing a corrugated washer in the filter housing of the housing upper part; and
- Within 4,000 hours time-in-service, modifying each affected main transmission housing upper part by machining the oil filter bypass inlet.

Differences Between This Proposed AD and the EASA AD

The EASA AD applies to Model EC 635 helicopters. The proposed AD does not, as this model is not type-certificated in the U.S.

Costs of Compliance

We estimate that this proposed AD would affect 227 helicopters of U.S. Registry. Based on an average labor rate of $85 per work hour, we estimate that operators may incur the following costs in order to comply with this proposed AD. Installing the corrugated washer would require about .5 work hour, and required parts would cost about $10, for a cost per helicopter of about $53, and a total cost to the U.S. operator fleet of $12,031. Machining the housing upper part would require about 5 work-hours and required parts would cost about $73, for a total cost per helicopter of $498, and a total cost to U.S. operators of $113,046.

According to the ECD ASB, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Eurocopter. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter Deutschland GmbH: Docket No. FAA–2013–0239; Directorate Identifier 2010–SW–087–AD.

(a) Applicability

This AD applies to Eurocopter Deutschland GmbH Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters with a main transmission FS108 housing upper part, part number (P/N) 4649 301 034 and a serial number listed in Table 1 of Eurocopter Alert Service Bulletin EC135–63A–017, Revision 0, dated October 11, 2010 (ASB EC135–63A–017), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an improperly manufactured bypass inlet in the oil filter area. This condition could adversely affect the oil-filter bypass function, resulting in failure of the main transmission and subsequent loss of control of the helicopter.

(c) Reserved

(d) Compliance

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

(e) Required Actions

(1) Within 3 months, remove the oil filter element and install a corrugated washer, P/N 0630100377, in the middle of the filter housing of the housing upper part as depicted in Figure 2 of ASB EC135–63A–017.

(2) Within 4,000 hours time-in-service or at the next main transmission repair or overhaul, whichever occurs first, machine the main transmission housing upper part in accordance with Annex A of ZF Luftfahrttechnik GmbH Service Instruction No. EC135FS108–1659–1009, dated September 14, 2010.

(3) Do not install a main transmission upper part, P/N 4649 301 034, on any helicopter unless it has been modified as required by paragraphs (e)(1) through (e)(2) of this AD.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency AD No. 2010–0213, dated October 14, 2010.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6320: Main Rotor Gearbox.

Issued in Fort Worth, Texas, on March 6, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–05872 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0210; Directorate Identifier 2012–NM–053–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model MD–11 and MD–11F airplanes. The existing AD currently requires inspecting to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and marking the location, as necessary; inspecting all wire bundles above the center upper auxiliary fuel tank for splices and damage; inspecting for damage to the fuel vapor barrier seal and upper surface of the center upper auxiliary fuel tank; and performing corrective actions, as necessary. The existing AD also requires installing nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel. The existing AD resulted from fuel system reviews conducted by the manufacturer. Since we issued that AD, we have identified additional center upper auxiliary fuel tank locations where inspections and corrective actions are needed. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 29, 2013.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5262; fax: (562) 627–5210; email: *samuel.lee@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0210; Directorate Identifier 2012–NM–053–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On December 16, 2009, we issued AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), for certain McDonnell Douglas Corporation Model MD–11 and MD–11F airplanes. That AD requires inspecting to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and marking the location, as necessary; inspecting all wire bundles above the center upper auxiliary fuel tank for splices and damage; inspecting for damage to the fuel vapor barrier seal and upper surface of the center upper auxiliary fuel tank; and corrective actions, as necessary. That AD also requires installing nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions Since AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), Was Issued

AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009) refers to Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009, as the appropriate source of service information for the required actions. Boeing has since revised this service information. We have reviewed Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011, which added additional work for certain airplanes. This additional work includes inspecting an additional wire bundle and installing additional sleeving, clamping, and an extruded channel over the center upper auxiliary fuel tank.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011. For information on the procedures and compliance times, see this service

information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0210.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009). This proposed AD would also require accomplishing the actions specified in the service information identified previously, except as discussed under ''Differences Between the AD and the Service Information.''

The phrase ''related investigative actions'' might be used in this proposed AD. ''Related investigative actions'' are follow-on actions that: (1) Are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

The Accomplishment Instructions of Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011, specify to contact Boeing for additional inspection and repair instructions, but this proposed AD would require operators to perform those actions using a method approved by the FAA.

Costs of Compliance

We estimate that this proposed AD affects 125 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/installation retained [actions from existing AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009].	168 to 182 work-hours × $85 per hour = $14,280 to $15,470 per inspection cycle.	$9,405 to $12,201	$23,685 to $27,671 per inspection cycle.	$2,865,885 to $3,348,191 per inspection cycle.
Inspection/installation Groups 1, 2, and 5, all Configuration 2 airplanes [new proposed action].	Up to 9 work–hours × $85 per hour = $765.	$2,863	Up to $3,628	Up to $438,988.
Inspection/installation Group 6 airplanes [new proposed action].	13 work-hours × $85 per hour = $1,105.	$7,932	$9,037	$36,148.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), and adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0210; Directorate Identifier 2012–NM–053–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by April 29, 2013.

(b) Affected ADs

This AD supersedes AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009).

(c) Applicability

This AD applies to The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011.

(d) Subject

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

(e) Unsafe Condition

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

(f) Compliance

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

(g) Retained Inspection and Corrective Action

This paragraph restates the requirements of paragraph (g) of AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), with revised service information. For airplanes identified in Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009: Within 60 months after February 4, 2010 (the effective date of AD 2009–26–16), do the actions specified in paragraphs (g)(1) through (g)(5) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009; or Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011; except as required by paragraph (j) of this AD. After the effective date of this AD, only Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011, may be used. Do all applicable corrective actions before further flight.

(1) Do a general visual inspection of the wire bundles between Stations 1238.950 and 1361.000 to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and mark the location, as applicable.

(2) Do a detailed inspection for splices and damage of all wire bundles above the center upper auxiliary fuel tank between Stations 1218.950 and 1381.000.

(3) Do a detailed inspection for damage (burn marks) of the upper surface of the center upper auxiliary fuel tank.

(4) Do a detailed inspection for damage (burn marks) on the fuel vapor barrier seal.

(5) Install a nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel.

(h) New Inspections and Corrective Action for Group 1, Configuration 2; Group 2, Configuration 2; and Group 5, Configuration 2 Airplanes

For airplanes in Group 1, Configuration 2; Group 2, Configuration 2; and Group 5, Configuration 2; as identified in Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011: Within 60 months after the effective date of this AD, do a detailed inspection of wire bundles for splices and damage (chafing, arcing, and broken insulation) and damage (burn marks) on the upper surface of the center upper auxiliary fuel tank and fuel vapor barrier seal; install barrier/shield sleeving and clamping; and do all applicable corrective actions at the locations specified in paragraphs (h)(1) through (h)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011, except as required by paragraph (k)(3) of this AD. Do all applicable corrective actions before further flight.

(1) For Group 1, Configuration 2 airplanes: between Stations 1238.950 and 1381.000, and Stations 1238.950 and 1256.000, and Stations 1238.950 and 1256.800, depending on passenger or freighter configuration.

(2) For Group 2, Configuration 2 airplanes: between Stations 1238.950 and 1275.250, and Stations 1238.950 and 1275.250, passenger configuration only.

(3) For Group 5, Configuration 2 airplanes: between Stations 1381.000 and 1238.950.

(i) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD, using the service bulletins specified in paragraphs (i)(1)(i), (i)(1)(ii), or (i)(1)(iii) of this AD.

(i) Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009.

(ii) Boeing Service Bulletin MD11–28–126, Revision 2, dated November 18, 2010, which is not incorporated by reference in this AD.

(iii) Boeing Service Bulletin MD11–28–126, Revision 3, dated June 3, 2011, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD, using Boeing Service Bulletin MD11–28–126, Revision 3, dated June 3, 2011.

(j) Repair

Where Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009; or Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011; specifies to contact The Boeing Company for repair instructions: Before further flight, repair the auxiliary fuel tank in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Los Angeles ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Structures Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), are approved as AMOCs for the corresponding requirements of this AD.

(l) Related Information

(1) For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5262; fax: (562) 627–5210; email: *samuel.lee@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 8, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05864 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0240; Directorate Identifier 2011–SW–060–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Eurocopter France (Eurocopter) Model AS350 and AS355 helicopters. This proposed AD would require inspecting

the tail rotor control stop screws to determine if they are correctly aligned and adjusting the screws if they are misaligned. This proposed AD is prompted by the discovery of a loose nut on the tail rotor control stop and a misaligned tail rotor control stop screw. The proposed actions are intended detect a loose nut or a misaligned stop screw, which, if not corrected, could limit yaw authority, and consequently, result in a loss of helicopter control.

DATES: We must receive comments on this proposed AD by May 13, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examing the AD Docket

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

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

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Aviation Safety Engineer, Continued Operational Safety, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2011–0164, dated August 31, 2011, to correct an unsafe condition for Eurocopter Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with either an autopilot or certain modifications installed. EASA advises that during take-off with a sling load, the pilot of a Model AS350B3 helicopter reached one of the yaw stops before its usual position. The inspection that followed revealed that a tail rotor control stop nut was loose and that the corresponding tail rotor control stop screw was ''out of adjustment.'' EASA states that this condition, if not detected and corrected, ''can lead to the loss of adjustment of the affected stop and consequently limit yaw authority, possibly resulting in loss of control of the helicopter.''

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. AS350–05.00.64 for Model AS350B, BA, BB, B1, B2, B3, and D civil helicopters and Model AS350L1 military helicopters, and ASB No. AS355–05.00.59 for Model AS355E, F, F1, F2, N, and NP civil helicopters, both Revision 0 and both dated August 30, 2011. The ASBs specify inspecting the locking of the stop screws and, if warranted, adjusting the stops, marking the screw/nut assembly with a red line of paint, and periodically inspecting the paint line's alignment on the screw/nut assembly.

Proposed AD Requirements

This proposed AD would require inspecting the locking of the stop screws within 110 hours time-in-service (TIS). If the stop screw turns, the proposed AD would require adjusting the stops. After adjusting the stops or if the screw does not turn, this proposed AD would require marking a line of red paint on the screw-nut assembly.

Thereafter, at intervals not to exceed 110 hours TIS, this proposed AD would require inspecting the locking of the screws and determining whether the red paint line on the screw and nut is aligned. If not aligned, this proposed AD would require removing the paint, readjusting the stops, and marking a new line of paint.

Differences Between This Proposed AD and the EASA AD

The EASA AD would require contacting Eurocopter if the red paint line on the screw/nut assembly is not aligned after an inspection. This proposed AD would not. The EASA AD applies to Eurocopter Model AS350BB helicopters. This proposed AD would not because Model AS350BB does not have an FAA type certificate. However, the proposed AD would apply to Eurocopter Model AS350C and AS350D1 helicopters because they have an FAA type certificate and because they have similar tail rotor stop screw assemblies as the other applicable helicopter models. The EASA AD does not apply to the Model AS350C and AS350D1 helicopters.

Interim Action

We consider this proposed AD to be an interim action because Eurocopter is

developing a modification that would address the unsafe condition identified in this AD. After this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 911 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

• Inspecting the locking of the stop screws would take about 0.4 hour for a labor cost of about $34 per helicopter and $30,974 for the U.S. fleet. No parts would be needed.

• Adjusting the stop screws, if needed, would require about 0.2 hour for a labor cost of $17. No parts would be needed.

• Painting the line would require 0.1 hour for a labor cost of about $9 per helicopter and $8,199 for the U.S. fleet. No parts would be needed.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2013–0240; Directorate Identifier 2011–SW–060–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category:

(1) Model AS350B, AS350BA, AS350B1, AS350B2, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, and AS355F2 helicopters with an autopilot installed;

(2) Model AS350B3 helicopters with an autopilot or modification 073252 installed; and

(3) Model AS355N and AS355NP helicopters with an autopilot or modification 071908 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a loose nut or misaligned tail rotor control stop screw (stop screw). This condition could result in limited yaw authority and subsequent loss of helicopter control.

(c) Compliance

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

(d) Required Actions

(1) Within 110 hours time-in-service (TIS), inspect the locking of the stop screws to determine whether the stop screws turn.

(i) If any stop screw turns, adjust the stop screw.

(ii) Mark a line of red paint on the screw-nut assembly as depicted in Section B–B, Figure 1 of Eurocopter Alert Service Bulletin (ASB) No. AS350–05.00.64 or ASB No. AS355–05.00.59, as applicable to your model helicopter. Both ASBs are Revision 0 and dated August 30, 2011.

(2) Thereafter, at intervals not to exceed 110 hours TIS, inspect the stop screws to determine whether the paint lines on the screw and the nut are aligned. If the red paint lines are not aligned, remove the paint, adjust the stop screw, and mark a new line of paint on the screw-nut assembly as depicted in Section B–B, Figure 1 of the ASB applicable to your helicopter model.

(e) Special Flight Permit

A one-time flight permit may be granted, provided that the pilot has full yaw authority before flight.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Aviation Safety Engineer, Continued Operational Safety, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency AD No. 2011–0164, dated August 31, 2011.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6720, tail rotor control system.

Issued in Fort Worth, Texas, on March 6, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–05876 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0074; Airspace Docket No. 13–ASO–3]

Proposed Amendment of Class E Airspace; Selmer, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Selmer, TN, as the Sibley Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Robert Sibley Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of airport.

DATES: Comments must be received on or before April 29, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0074; Airspace Docket No. 13–ASO–3, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0074; Airspace Docket No. 13–ASO–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0074; Airspace Docket No. 13–ASO–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new Standard Instrument Approach Procedures developed at Robert Sibley Airport, Selmer, TN. The geographic coordinates of Robert Sibley Airport would be adjusted to coincide with the FAAs aeronautical database. Airspace reconfiguration is necessary due to the decommissioning of the Sibley NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Robert Sibley Airport, Selmer, TN.

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

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

* * * * *

ASO TN E5 Selmer, TN [Amended]

Robert Sibley Airport, TN
(Lat. 35°12′11″ N., long. 88°29′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Robert Sibley Airport.

Issued in College Park, Georgia, on March 5, 2013.

Barry A. Knight,

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

[FR Doc. 2013–05912 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–044–FOR; Docket ID OSM–2013–0001]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Wyoming proposes revisions to rules concerning valid existing rights and individual civil penalties. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., m.d.t., April 15, 2013. If requested, we will hold a public hearing on the amendment on April 8, 2013. We will accept requests to speak until 4:00 p.m., m.d.t. on March 29, 2013.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: www.regulations.gov*. This proposed rule has been assigned Docket ID: OSM–2013–0001. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *www.regulations.gov,* you may review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018, (307) 261–6547, *jfleischman@osmre.gov*.

Todd Parfitt, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, (307) 777–7555, *todd.parfitt@wyo.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6547. Internet: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated January 4, 2013, Wyoming sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2013–0001) under SMCRA (30 U.S.C. 1201 *et seq*.). Wyoming submitted the amendment in response to a concern letter OSM sent relating to valid existing rights (VER) and a **Federal Register** notice (78 FR 10512) that disapproved several proposed VER rule changes that were required by an April 2, 2001, letter we sent in accordance with 30 CFR 732.17(c). That letter required Wyoming to submit amendments to ensure its program remains consistent with the Federal program. This amendment package is intended to address all remaining required rule changes pertaining to VER. Wyoming also proposes changes to its rules for individual civil penalties that were disapproved in the **Federal Register** notice.

Specifically, Wyoming proposes to amend the Land Quality Division Coal Rules and Regulations at Chapter 1, Section 2(fl) (definition of ''Valid Existing Rights'' and the applicable standards and procedures used to evaluate VER claims); Chapter 12, Section 1(a)(v)–(vii) (VER determination and permitting procedures); Chapter 16, Section 4(a)(iii) (definition of ''willfully''); and 16, Section 4(b)(i)

(assessment of individual civil penalties). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

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 in the electronic docket for this rulemaking at *www.regulations.gov*. 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on March 29, 2013. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 2013.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2013–05921 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–0102]

RIN 1625–AA08

Special Local Regulations; Dragging on the Waccamaw, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Outboard Drag Boat Association (ODBA) dragging on the Waccamaw, a series of high-speed boat races. The event is scheduled to take place on 11:00 a.m. Saturday, June 22, 2013, through 7:30 p.m. Sunday, June 23, 2013. Approximately 50 high-speed race boats are anticipated to participate in the races. These special local regulations are necessary to provide for the safety of life and property on navigable waters of the United States during the event. These special local regulations would temporarily restrict vessel traffic in a portion of the Atlantic Intracoastal Waterway. Persons and vessels that are not participating in the races would be prohibited from entering, transiting through, anchoring in, or remaining within the restricted area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before April 30, 2013. Requests for public meetings must be received by the Coast Guard on or before April 15, 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 Chief Warrant Officer Christopher Ruleman, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Christopher.L.Ruleman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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–2013–0102] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0102) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before April 15, 2013 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person named in the **FOR FURTHER INFORMATION CONTACT** section, above.

B. Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the proposed rule is to ensure safety of life and property on the navigable waters of the United States during the ODBA Dragging on the Waccamaw boat races.

C. Discussion of Proposed Rule

On Saturday, June 22, 2013, and Sunday, June 23, 2013 the Outboard Drag Boat Association (ODBA) will host ''Dragging on the Waccamaw,'' a series of high-speed boat races. The event will be held on a portion of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. Approximately 50 high-speed race boats are anticipated to participate in the races.

The proposed rule would establish a special local regulation that encompass certain waters of the Intracoastal Waterway in Bucksport, South Carolina. The special local regulation would be enforced daily from 10:30 a.m. until 7:30 p.m. on June 22, 2013 through June 23, 2013. The special local regulation would consist of a regulated area around vessels participating in the event. The regulated area would be as follows: All waters of the Atlantic Intracoastal Waterway encompassed within an imaginary line connecting the following points; starting at point 1 in position 33°39′11.46″ N 079°05′36.78″ W; thence west to point 2 in position 33°39′12.18″ N 079°05′47.76″ W; thence south to point 3 in position 33°38′39.48″ N 079°05′37.44″ W; thence east to point 4 in position 33°38′42.3″ N 079°05′30.6″ W; thence north back to origin. All coordinates are North American Datum 1983. Persons and vessels, except those participating in the race, would be prohibited from entering, transiting through, anchoring, or remaining within the regulated area unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization would be required to comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard would provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners,

and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulations would be enforced for only seventeen hours over a two-day period; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard would provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Intracoastal Waterway encompassed within the regulated area from 10:30 a.m. until 7:30 p.m. on June 22, 2013 and June 23, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a special local regulation issued in conjunction with a regatta or marine parade, as described in figure 2–1, paragraph (34)(h), of the Instruction. Under figure 2–1, paragraph (34)(h) of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 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. Add a temporary § 100.35T07–0102 to read as follows:

§ 100.35T07–0102 Special Local Regulations; ODBA Dragging on the Waccamaw, Atlantic Intracoastal Waterway, Bucksport, SC.

(a) *Regulated area.* The rule establishes a special local regulation on certain waters of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. The special local regulation will consist of a regulated area which will be enforced daily from 10:30 a.m. until 8:00 p.m., on June 22, 2013 and June 23, 2013. The special local regulation would consist of a regulated area around vessels participating in the event. The following location is a regulated area: All waters of the Atlantic Intracoastal Waterway encompassed within an Imaginary line connecting the following points; starting at point 1 in position 33°39′11.46″ N 079°05′36.78″ W; thence west to point 2 in position 33°39′12.18″ N 079°05′47.76″ W; thence south to point 3 in position 33°38′39.48″ N 079°05′37.44″ W; thence east to point 4 in position 33°38′42.3″ N 079°05′30.6″ W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels, except those participating in the Dragging on the Waccamaw, or serving as safety vessels, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced daily from 10:30 a.m. until 8:00 p.m. on June 22, 2013 through June 23, 2013.

Dated: March 1, 2013.

M.F. White,

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

[FR Doc. 2013–05710 Filed 3–13–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0085]

RIN 1625–AA00

Safety Zone; V. I. Carnival Finale; St. Thomas Harbor; St. Thomas, U.S. Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone on the waters of St. Thomas Harbor in St. Thomas, U. S. Virgin Islands during the V. I. Carnival Finale, a firework display. The event is scheduled to take place on Saturday, April 27, 2013, and will entail a barge being positioned near the St. Thomas Harbor channel from which fireworks will be lit.

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 Chief Warrant Officer Anthony Cassisa, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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–2013–0085 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2013–0085 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).

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

C. Discussion of Proposed Rule

On April 27, 2013, Fireworks by Grucci and Left Lane Productions are sponsoring the V. I. Carnival Finale, a firework display event. The event will be held on the waters of St. Thomas Harbor, St. Thomas, U.S. Virgin Islands. Fireworks will be launched from a barge stationed near the St. Thomas Harbor channel.

This safety zone encompasses waters in St. Thomas Harbor. The zone will be enforced from 5:00 p.m. until 10:00 p.m. on April 27, 2013. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port San Juan or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone will be enforced for only five hours; (2) persons and vessels may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of St. Thomas Harbor encompassed within the safety zone from 5:00 p.m. until 10:00 p.m. on April 27, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a

significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

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 a safety zone that will be enforced for five hours. This rule is categorically excluded under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0085 to read as follows:

§ 165.T07–0085 Safety Zone; V. I. Carnival Finale, St. Thomas Harbor; St. Thomas, U.S. Virgin Islands.

(a) The following area is established as a safety zone: All waters within an 800 foot radius of 18°20.200N, 64°55.200W. Coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port San Juan or those participating in the firework display.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the

regulated areas by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(3) The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 5:00 p.m. until 10:00 p.m. on Saturday, April 27, 2013.

Dated: March 3, 2013.

D.W. Pearson,

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

[FR Doc. 2013–05906 Filed 3–13–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0086]

RIN 1625–AA00

Safety Zone, Corp. Event Finale UHC, St. Thomas Harbor; St. Thomas, U.S. Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone on the waters of St. Thomas Harbor in St. Thomas, U.S. Virgin Islands during the Corp. Event Finale UHC firework display. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. The event is scheduled to take place on Wednesday, April 24, 2013, and will entail a barge being positioned near the St. Thomas Harbor channel from which fireworks will be lit.

DATES: Comments and related material must be received by the U.S. 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 Chief Warrant Officer Anthony Cassisa, Sector San Juan Prevention Department, U.S. Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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 U.S. 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 U.S. 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–2013–0086 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2013–0086 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).

B. Basis and Purpose

The legal basis for the rule is the U.S. Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

C. Discussion of Proposed Rule

On April 24, 2013, Fireworks by Grucci and Left Lane Productions is sponsoring the Corp. Event Finale UHC,

a firework display. The event will be held on the waters of St. Thomas Harbor, St. Thomas, U.S. Virgin Islands. This will entail one barge that will be used to light fireworks, which will be stationed near the St. Thomas Harbor channel.

The safety zone encompasses certain waters of St. Thomas Harbor, St. Thomas, U.S. Virgin Islands. The safety zone will be enforced from 8:00 p.m. until 10:00 p.m. on April 24, 2013. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The U.S. Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone will be enforced for only two hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the U.S. Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The U.S. 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of St. Thomas Harbor encompassed within the safety zone from 8:00 p.m. until 10:00 p.m. on April 24, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The U. S. 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 U. S. Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an

environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

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 a safety zone that will be enforced for only two hours. This rule is categorically excluded, under, paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07– 0086 to read as follows*:*

§ 165.T07–0086 Safety Zone, Corp. Event Finale UHC, St. Thomas Harbor; St. Thomas, U.S. Virgin Islands.

(a) *Regulated Areas.* The following regulated area is established as a safety zone: All waters within an 800 foot radius of 18°18.205 N, 64°55.556 W. All coordinates are North American Datum 1983. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan.

(b) *Definition.* The term ''designated representative'' means U.S. Coast Guard Patrol Commanders, including U.S. Coast Guard coxswains, petty officers, and other officers operating U.S. Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port San Juan or those participating in the firework display.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(3) The U.S. Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced on Wednesday, April 24, 2013 from 8:00 p.m. until 10:00 p.m.

Dated: March 3, 2013.

D.W. Pearson,

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

[FR Doc. 2013–05905 Filed 3–13–13; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Refunds and Exchanges

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service™ proposes to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 604.9, and other DMM sections, to remove obsolete standards pertaining to postage refunds and stamp exchanges; standardize processes for requesting refunds for PC Postage® labels and extra service refunds; and change the methods for calculating refund assessment amounts.

DATES: Submit comments on or before April 15, 2013.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N., Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: *ProductClassification@usps.gov,* with a subject line of ''Refunds and Exchanges.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT:

Vicki Bosch, *vicki.m.bosch@usps.gov,* 202–268–4978
Douglas Germer, *douglas.g.germer@usps.gov,* 202–268–8522
Hank Heren, *hank.g.heren@usps.gov,* 309–671–8926
Karen Key, *karen.f.key@usps.gov,* 202–268–2282
Suzanne Newman, *suzanne.j.newman@usps.gov,* 202–268–5581

SUPPLEMENTARY INFORMATION:

Technological advances have facilitated expansion of authorized methods for paying postage and requesting postage refunds. As a result, certain manual

refund processes have become unnecessary and inefficient. As new postage payment methods options were adopted, some refund and appeals time periods were inadvertently omitted. No changes are proposed to the claims process for indemnity for Insured and COD articles. If adopted, these proposed changes will correct earlier revisions, provide clarity, and remove obsolete standards as follows:

- Standards for refunds for postage stamps affixed to Business Reply Mail® (BRM) pieces, and for annual presort mailing fees, would be revised so that the permit holder may request a credit to an advance deposit account. A direct refund could be requested for postage affixed to BRM only if an advance deposit account is not used or is unavailable under 604.9.2.6.
- The refund amount for postage stamps affixed to BRM pieces would be aligned with other forms of postage refunds by eliminating the assessment for the USPS work hours used to process the refund. Refunds may not exceed 90 percent of the indicia's face value.
- The amount granted for refunds for dated or undated, unused postage meter indicia, when the total face value of the indicia is more than $350, would be aligned with the process used when the total face value is less than $350, which is 90 percent of the face value of the indicia. This would include eliminating assessments for work hours used to process the refund.
- Clarifications would be made that meter postage refunds are not given for: A decertified meter or a meter which is reported lost by the provider and recovered after 365 days.
- We propose to remove the following obsolete standards from the DMM: Converting stamps to other postage forms, the former Special Delivery service, and providing refunds for adhesive stamps affixed to unmailed matter in connection with an authorized marketing program. Additionally, as a result of removing obsolete stamp conversions, only exchanges of Semipostal stamps would be permitted.
- We propose additional language in the standards for extra service refunds to clarify that proof of receipt by the Postal Service must be included with the refund request, regardless of the postage payment method used. Proof of acceptance can be a valid USPS acceptance or mail processing scan, a USPS postmarked (round-dated) mailing receipt or retail Post Office mailing receipt. Evidence that postage was paid is not proof the article was presented for mailing or was inducted into the mailstream.
- Prior to the availability of electronic scanning data, signatures were routinely captured for mailpieces being returned to the sender as undeliverable. Additionally, when mailpieces with extra services that do not include indemnity, such as Certified Mail® and Signature Confirmation™, are designed to capture the signature of the recipient indicated by the sender in the delivery address. We propose new standards to clarify that if the sender or the sender's agent is not available to sign for returned, undeliverable Certified Mail, Signature Confirmation items, capturing the sender's signature is not required. Return to sender scans will still be provided in these cases.
- Consistent with existing delivery record retention periods, language is being incorporated to state that refund requests for extra services not rendered should be made by the mailer not less than 10 days, or not more than 18 months (i.e. before the two year record retention period expires), from date that the service was purchased.
- Duplicate references to Express Mail® *refunds not given* provided in DMM sections 114.2.0, 214.3.0, 314.3.0, and 414.3.0, along with other related refund standards, will be relocated to existing section 604.9.5, *Express Mail Postage Refunds.*
- We propose a minimum threshold of $50 per mailing for mailers requesting Value Added Refunds (VAR). Data shows that approximately 10 percent of all VAR refunds requested are below $50. More specifically, 2.44 percent are for amounts less than $10 and 1 percent is for amounts less that $1. The administrative costs, associated to both the mailer and the Postal Service, will generally exceed $50 making such requests a negative return on investment.
- The Postal Service provides customers with an appeals process for unfavorable rulings on postage refund requests made to an authorized PC Postage provider. These appeals require a manual, detailed review of the denial that was not previously accounted for in refunds standards. Therefore, we propose to align the refund standards for PC Postage appeals with the standards for meter indicia refunds. If an appeal of an unfavorable refund request regarding PC Postage results in a refund, its amount would not exceed 90 percent of the indicia's face value.

Customers are reminded that, except in the event of a service failure on a guaranteed product or for an extra service, refund requests for postage purchased through an authorized PC Postage provider must be made directly through that provider. Only appeals to an adverse ruling on such requests made by a provider within the allotted time period may be directed to the Postal Service through the manager, Payment Technology, USPS Headquarters as provided in DMM 608.8.

If the proposed rules in this article are adopted, PS Form 3533, *Application for Refund of Fees,* will be revised to reflect the changes.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

113 Prices and Eligibility

* * * * *

2.0 Basic Eligibility Standards for Express Mail

2.1 Definition

[Revise the first sentence of 2.1 and then add a new second sentence as follows:]

Express Mail is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below. Refunds standards for domestic Express Mail Next Day and Second Day Delivery are provided in 604.9.5. * * *

* * * * *

4.0 Service Features of Express Mail

* * * * *

4.2 Express Mail Next Day Delivery

* * * * *

[Delete 4.2.6 Refunds in its entirety.]

* * * * *

4.3 Express Mail Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

* * * * *

4.4 Express Mail Military Service (EMMS)

4.4.1 Objectives

[Replace the third sentence of 4.4.1 as follows:]

* * *. For EMMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

114 Postage Payment Methods

* * * * *

[Delete 2.0, Postage Refunds, in its entirety.]

* * * * *

200 Commercial Letters and Cards

* * * * *

210 Express Mail

213 Prices and Eligibility

* * * * *

3.0 Basic Standards for Express Mail

3.1 Definition

[Revise the first sentence of 3.1 then add a new second sentence as follows:]

Express Mail is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below. Refunds standards for domestic Express Mail are provided in 604.9.5. * * *

* * * * *

4.0 Service Features of Express Mail

* * * * *

4.2 Express Mail Next Day Delivery

* * * * *

[Delete 4.2.5 Refunds in its entirety.]

* * * * *

4.3 Express Mail Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

4.4 Express Mail Custom Designed

[Delete 4.4.8 Refunds]

* * * * *

4.5 Express Mail Military Service (EMMS)

4.5.1 Objectives

[Replace the third sentence of 4.5.1 as follows:]

* * *. For EMMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

214 Postage Payment and Documentation

* * * * *

[Delete 3.0, Postage Refunds, in its entirety.]

* * * * *

300 Commercial Flats

* * * * *

310 Express Mail

313 Prices and Eligibility

* * * * *

3.0 Basic Standards for Express Mail

3.1 Definition

[Revise the first sentence of 3.1 and then insert a new second sentence as follows:]

Express Mail is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below. Refunds standards for domestic Express Mail are provided in 604.9.5. * * *

* * * * *

4.0 Service Features of Express Mail

* * * * *

4.2 Express Mail Next Day Delivery

* * * * *

[Delete 4.2.5 Refunds in its entirety.]

4.3 Express Mail Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

4.4 Express Mail Custom Design

* * * * *

[Delete 4.4.8 Refunds in its entirety.]

4.5 Express Mail Military Service (EMMS)

4.5.1 Objectives

[Replace the third sentence of 4.5.1 as follows:]

* * *. For EMMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

314 Postage Payment and Documentation

* * * * *

[Delete 3.0, Postage Refunds, in its entirety.]

* * * * *

400 Commercial Parcels

* * * * *

410 Express Mail

413 Prices and Eligibility

* * * * *

3.0 Basic Standards for Express Mail

3.1 Definition

[Revise the first sentence of 3.1 and then insert a new second sentence as follows:]

Express Mail is an expedited service for shipping any mailable matter, with a money-back guarantee, subject to the standards below. Refunds standards for domestic Express Mail are provided in 604.9.5. * * *

* * * * *

4.0 Service Features of Express Mail

* * * * *

4.2 Express Mail Next Day Delivery

* * * * *

[Delete 4.2.5 Refunds in its entirety.]

* * * * *

4.3 Express Mail Second Day Delivery

* * * * *

[Delete 4.3.5 Refunds in its entirety.]

* * * * *

4.4 Express Mail Custom Designed

[Delete 4.4.9 Refunds]

4.5 Express Mail Military Service (EMMS)

4.5.1 Objectives

[Replace the third sentence of 4.5.1 as follows:]

* * *. For EMMS, the USPS refunds standards are provided in 604.9.5.

* * * * *

414 Postage Payment and Documentation

* * * * *

[Delete 3.0, Postage Refunds, in its entirety.]

* * * * *

500 Additional Mailing Services

* * * * *

505 Return Services

1.0 Business Reply Mail (BRM)

* * * * *

1.6 Postage, Per Piece Fees, and Account Maintenance Fees

* * * * *

1.6.6 With Postage Affixed

[Revise the fourth sentence of 1.6.6 as follows:]

* * * The permit holder may request a credit to the advance deposit account for postage affixed to BRM. A refund may be requested under 604.9.2 for postage affixed to BRM only if an advance deposit is not used.

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

* * * * *

1.8 Returning Mail

1.8.5 Extra Services

[Revise 1.8.5 by revising the text of the fourth sentence and adding a new fifth sentence as follows:]

* * * The sender must sign a delivery receipt for returned Express Mail and for Registered Mail, COD articles, mail insured for more than $200, and any mail sent with return receipt for merchandise service. Returned Express Mail (when waiver of signature is requested by sender), Certified Mail, and mail with Signature Confirmation service, USPS Tracking/Delivery Confirmation service, or return receipt for merchandise service may be returned to the sender without obtaining a signature when those mailpieces are properly returned to sender as undeliverable.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.7 Authorization to Produce and Distribute Postage Evidencing Systems

[Revise the second sentence of 4.7 as follows:]

* * * Additional information may be obtained from the manager, Payment Technology (see *608.8.1* for address).

* * * * *

[Revise the title of 9.0 as follows:]

9.0 Exchanges and Refunds

9.1 Stamp Exchanges

9.1.1 USPS Fault

* * * * *

9.1.2 Damaged in Customer's Possession

[Revise 9.1.2 as follows:]

Stamps, including stamped paper (cards and envelopes), that are damaged or otherwise unusable for postage (because of humidity, moisture, or other causes) while in a customer's possession may be exchanged only for an equal number of stamps of the same denomination or if applicable, unusable stamped paper may be exchanged for stamped paper under 9.1.2a through 9.1.2d. Unused precanceled stamps in full coils and in full sheets redeemed from precanceled permit holders: 90% of postage value. Unusable stamps, including stamped paper, accepted from a customer under these conditions must be those on sale at Post Offices within 12 months before the transaction. Quantities of the same denomination over $10 must be returned in the same configuration as when bought (i.e., sheets, coils, booklets). Each such transaction is limited to $100 worth of postage from each customer. These additional conditions apply to exchanges of stamped paper:

a. Only the buyer may exchange stamped paper with a printed return address or other matter printed by the buyer.

b. Stamped envelopes (mutilated no more than is necessary to remove contents): Postage value plus value of postage added because of a price increase or for additional service.

c. Unmutilated single and double stamped cards: 85% of postage value, plus full value of postage added. Unused double stamped cards printed for reply should not be separated but, if they are separated in error and the buyer presents both halves, the cards may be redeemed. Reply halves of double stamped cards returned to sender outside of the mail are not redeemable by the original buyer, even though the reply half received no postal service.

d. Stamps affixed to commercial envelopes and postcards: 90% of postage value. Envelopes and postcards must be in substantially whole condition and in lots of at least 50 of the same denomination and value.

* * * * *

[Renumber current 9.1.4 as new 9.1.8.]

[Renumber current 9.1.5 as new 9.1.4.]

[Add new 9.1.5 (renumbered from current 9.2.8) and revise the text as follows:]

9.1.5 Semipostal Stamps

Customers may exchange semipostal stamps for their postage value (*i.e.,* the price of the stamps less the contribution amount) to the extent that exchange of postage stamps is permitted. The postage the customer exchanges is equal to the First-Class Mail single-piece one-ounce letter price in effect at the time of exchange. However, if the customer provides a receipt showing the date of purchase, the postage exchanged is equal to the postage price in effect at the time of purchase. The contribution amount is not refundable and is not included in the exchange value.

[Delete 9.1.6, Exchange of Spoiled and Unused Postal Matter, in its entirety.]

[Delete current 9.1.7, Stamps Converted to Other Postage Forms, in its entirety.]

[Renumber current 9.1.8 as new 9.1.7 and revise the introductory text of renumbered 9.1.7 as follows:]

9.1.7 Not Exchangeable

The following postage items cannot be exchanged:

[Revise the text of renumbered 9.1.7 item a. as follows:]

a. Adhesive stamps, unless mistakes were made in buying (9.1.4), stamps were defective or stamps were affixed to commercial envelopes and postcards.

* * * * *

[Revise the title of renumbered 9.1.8 as follows:]

9.1.8 Appeal of Denied Exchange

* * * * *

9.2 Postage and Fee Refunds

[Revise the title of 9.2.1 as follows:]

9.2.1 General Standards

A refund of postage and fees may be made:

* * * * *

[Revise item 9.2.1b by deleting the second sentence and revising the text of the first sentence as follows:]

Under 9.3 for postage evidencing systems refund requests (4.0), which includes postage meters and PC Postage products. * * *

[Revise item 9.2.1c as follows:]

c. Under 9.4 for Value Added Refund (VAR) requests made at the time of mailing.

[Delete item 9.2.1e (relocated as part of renumbered 9.2.3 item m).]

[Delete current 9.2.3, Torn or Defaced Mail, in its entirety (relocated as part of renumbered 9.2.3, item l).]

[Renumber current 9.2.4 through 9.2.7 as new 9.2.3 through 9.2.6.]

9.2.3 Full Refund

A full (100%) refund or credit may be made when:

* * * * *

[Delete redesignated item 9.2.3e and redesignate items 9.2.3f through 9.2.3l as new items 9.2.3e through 9.2.3k.]

[Revise renumbered item h by adding a new second sentence as follows:]

h. * * * The permit holder should request a credit to its advance deposit account, unless an advance deposit account is not used or is unavailable and a refund is requested.

[Add new items 9.2.3l and 9.2.3m as follows:]

l. If a First-Class Mail, First-Class Package Service, Standard Post or Package Services mailpiece is torn or defaced during USPS handling so that the addressee or intended delivery point cannot be identified. Where possible, the damaged item is returned with the postage refund.

m. Under the terms of a contract between a contract postal unit (CPU) and the USPS for unused postage printed by the CPU.

[Revise the title of 9.2.4 as follows:]

9.2.4 Postage Refunds Not Available

* * * No refunds may be made for the following:

* * * * *

[Revise renumbered item 9.2.4e as follows:]

e. Unused Priority Mail Forever Prepaid Flat Rate packaging. Exact exchanges are made directly through the Express and Priority Mail Supply Center (EPMSC) by calling 800–610–8734 and are only authorized when the unused packaging purchased by credit card from *www.usps.com* arrives in damaged condition.

[Add new items 9.2.4f, 9.2.4g and 9.2.4h as follows:]

f. For postage (and/or fees for extra services not rendered) when a postmarked (round-dated) mailing receipt or a valid USPS acceptance or mail processing scan is not available.

g. For extra service fees, when a refund is requested less than 10 days, or more than 18 months, from the date that the service was purchased.

h. For extra service fees, when the service could not be provided and the mailpieces are properly returned to sender as undeliverable.

9.2.5 Applying for Refund

[Revise the text of renumbered 9.2.5 as follows:]

For refunds under 9.2, the customer must apply for a refund on Form 3533; submit it to the postmaster; and provide the envelope, wrapper (or a part of it) showing the names and addresses of the sender and addressee, canceled postage and postal markings, or other evidence of postage and fees paid. The local postmaster grants or denies refund requests under 9.2. If the request is granted, the amount refunded may not exceed 90% of the indicia's face value. Payment processing is through USPS Accounting Services. Adverse rulings may be appealed through the postmaster to the manager, Pricing and Classification Service Center (see 608.8.0), who issues the final agency decision. Refunds for postage evidencing systems postage are submitted under 9.3.

[Delete renumbered 9.2.6.]

[Renumber current 9.2.9 as new 9.2.6 and revise the title and text as follows:]

9.2.6 Postage Affixed to Business Reply Mail

The permit holder may request a credit to an advance deposit account for postage affixed to BRM. A refund may be requested for postage affixed to BRM only if an advance deposit is not used or is unavailable. Refunds are not given for foreign postage affixed to BRM. The permit holder must submit a completed Form 3533 to the postmaster documenting the excess postage payment for which a credit or refund is desired. The permit holder also must present properly faced and banded bundles of 100 identical BRM pieces with identical amounts of postage affixed when quantities allow. Once processed, the amount credited or refunded for postage affixed on BRM may not exceed 90% of the face value. Credits or refunds are not given for any BRM or QBRM per piece charges, annual accounting fees, quarterly fees, or monthly maintenance fees.

* * * * *

[Revise the title of 9.3 as follows:]

9.3 Refunds for Postage Evidencing Systems

[Renumber current 9.3.1 as new 9.3.7.]

[Add new item 9.3.1 as follows:]

9.3.1 Description

Postage meters and PC Postage products are collectively identified as ''postage evidencing systems.'' A postage evidencing system is a device or system of components a customer uses to print evidence that required postage has been paid. Refunds for postage and fees when payment is made by postage evidencing system indicia are granted as applicable in 9.3.2 through 9.3.12 and as follows:

a. Refund requests must include the entire envelope or wrapper or a sufficient portion of the container showing the indicia must be included to validate that the item was never deposited with the USPS. Unused metered postage must not be removed from the mailpiece (including unmailed meter reply mail).

b. Indicia printed on labels or tapes not adhered to wrappers or envelopes must be submitted loose and must not be stapled together or attached to any paper or other medium. Self-adhesive labels printed without a backing may be submitted on a plain sheet of paper.

c. If a part of one indicium is printed on one envelope or card and the remaining part on one or others, the envelopes or cards must be fastened together to show that they represent one indicium.

d. Refunds are allowable for indicia on metered reply envelopes only when it is obvious that an incorrect amount of postage was printed on them.

[Revise the title and text of 9.3.2 as follows:]

9.3.2 General Standards for Metered Indicia Refunds

Unused metered indicia are postage amounts (which may include fees) already imprinted onto any mailpiece, shipping label or meter strip (stamp) that was never mailed. Such meter indicia are considered for refund only if complete, legible, and valid. Authorized users must submit requests within 60 days of the date(s) shown in the indicia. Requests must include proof (such as a copy of the lease or contract) that the person or entity requesting the refund is the authorized user of the postage meter that printed the indicia. See 9.3.3 for additional standards applicable to dated, unused metered indicia and 9.3.4 for additional standards applicable to undated, unused metered indicia. For both types of unused metered indicia, submit refund requests as follows:

a. The items with unused postage must be sorted by meter used and then by postage value shown in the indicia, and must be properly faced and bundled in groups of 100 identical items when quantities allow.

b. Submit a refund request with a separate Form 3533 for each meter for which a refund is requested. Complete all identifying information and sections of the form. Refunds are processed as follows:

1. If the request is granted, the amount refunded may not exceed 90% of the face value.

2. If a request is denied, the authorized user may appeal within 30 days of the ruling to the Manager, Pricing and Classification Center (see 608.8.0), who issues the final agency decision. The original meter indicia must be submitted with the appeal.

[Renumber current 9.3.3 as new 9.3.10.]

[Add new 9.3.3 as follows:]

9.3.3 Dated, Unused Meter Indicia

Refund requests for dated, unused meter indicia must be submitted to the local Post Office, under 9.3.1 and 9.3.2.

The request is processed by the local Postmaster, who grants or denies the refund.

[Revise the title and text of 9.3.4 as follows:]

9.3.4 Undated, Unused Meter Indicia

Authorized users, or the commercial entity that prepared the mailing for the authorized user, must submit refund requests for undated, unused meter indicia under 9.3.1 and as follows:

a. The request must include a letter signed by the authorized user, or by the commercial entity that prepared the mailing, explaining why the mailpieces were not mailed.

b. The minimum quantity of unused, undated metered postage that may be submitted for refund is 500 pieces from a single mailing or indicia with a total postage value of at least $500 from a single mailing.

c. Supporting documentation must be submitted to validate the date. Examples of supporting documentation include the job order from the customer, production records, the USPS qualification report, spoilage report, and reorders created report, as well as customer billing records, postage statements, and a sample mailpiece.

d. The request must be submitted (with the items bearing unused postage and the documentation) to the manager, business mail entry at the USPS district overseeing the mailer's local Post Office, or to a designee authorized in writing. The manager or designee approves or denies the refund request.

[Renumber current 9.3.5 as new 9.3.9.]

[Renumber current 9.3.6 as new 9.3.5.]

9.3.5 Ineligible Metered Postage Items

The following metered postage items are ineligible for refunds:

[Revise renumbered item 9.3.5a as follows:]

a. Meter reply pieces unless an incorrect postage price was printed.

* * * * *

[Revise renumbered item 9.3.5c as follows:]

c. Loose indicia printed on labels or tape that have been stapled together or attached to paper or other medium, except under 9.3.2c.

[Revise renumbered item 9.3.5e as follows:]

e. Indicia printed on mail returned to sender as undeliverable as addressed.

[Delete current 9.3.7, Refunds for Metered Postage, in its entirety and renumber current 9.3.8 as new 9.3.6.]

9.3.6 Rounding Numerical Values

[Revise the text of renumbered 9.3.6 as follows:]

Any fraction of a cent in the total to be refunded is rounded down to the whole cent. Any such rounding is unrelated to calculating a 90% maximum.

[Revise the title and text of renumbered 9.3.7 as follows:]

9.3.7 Unused Postage Value in Meter

The unused postage value remaining in a meter system when withdrawn from service may be refunded, depending upon the circumstance and the ability of the USPS to make a responsible determination of the actual or approximate amount of the unused postage value. When postage meters are withdrawn because of faulty operation, a final postage adjustment or refund will be withheld pending the system provider's report of the cause. Once provided, the USPS will make the determination of whether a refund is warranted and any refund amount, if applicable.

When a meter damaged by fire, flood, or similar disaster is returned to the provider, postage may be refunded or transferred when the registers are legible and accurate, or the register values can be reconstructed by the provider based on adequate supporting documentation. When the damaged meter is not available for return, postage may be refunded or transferred only if the provider can accurately determine the remaining postage value based on adequate supporting documentation. The authorized user may be required to provide a statement as to the cause of the damage and the absence of any reimbursement by insurance or otherwise, and that the authorized user will not also seek such reimbursement. No refund is given for faulty operation caused by the authorized user, for a decertified meter, or if a meter is reported lost by the provider and recovered after 365 days. Refunds for unused postage value in meter systems are provided as follows:

a. Authorized users must notify their provider to withdraw the meter and to refund any unused postage value remaining on it.

b. The meter must be examined to verify the amount before any funds are cleared from the meter. Based on what is found, a refund or credit may be initiated for unused postage value, or additional money owing for postage value used.

c. The provider forwards the refund request to the USPS for payment or credit to the authorized user's mailing account.

d. The USPS will not issue individual customer refunds for unused postage value less than $25.00 remaining in a meter.

[Add new 9.3.8 as follows:]

9.3.8 General Standards for PC Postage Indicia Refunds

Unused PC Postage indicia are considered for refund only if complete, legible, valid and documented pursuant to 9.3.1. See 9.3.9 for additional standards applicable to requests for undated unused PC Postage indicia and 9.3.10 and 9.3.11 for additional standards applicable to requests for refunds of dated unused PC Postage indicia. For all types of unused PC Postage indicia, submit refund requests as follows:

a. Only authorized PC Postage users may request a refund.

b. The PC Postage system provider grants or denies a request for a refund for PC Postage indicia using established USPS criteria.

c. If a request is denied, the authorized user may appeal within 30 days of the ruling through the manager, Payment Technology, USPS Headquarters (see 608.8) who issues the final agency decision. Requests for appeal must include the physical submission of the original label. If the exact numerical value of postage paid is not displayed in the indicia, the customer must submit the corresponding transaction log. The customer's specific reason for requesting the appeal must be included. If the appeal to an unfavorable refund request ruling results in a refund being granted, the amount refunded may not exceed 90% of the indicia's face value.

[Revise the text of renumbered 9.3.9 as follows:]

9.3.9 Unused, Undated PC Postage Indicia

Refunds will not normally be provided for valid, undated, serialized PC Postage indicia containing commonly used postage values. If the authorized user believes extraordinary circumstances justify an exception, requests for such refunds must include a detailed explanation. Requests will be considered by the PC Postage system provider on a case by case basis and as provided in 9.3.1 and, 9.3.8.

[Revise the text of renumbered 9.3.10 as follows:]

9.3.10 Unused, Dated PC Postage Indicia With PIC

The refund request should reflect any package identification code (PIC). Requests for refund of international mail postage (domestic origin only) and fees may include valid PICs for any form of USPS Tracking/Delivery Confirmation,

Signature Confirmation, or Express Mail service, and include those PICs available through the Track & Confirm service on usps.com. Requests for refund of PC Postage indicia that contain a valid Postal Identification Code (PIC) are provided as follows:

a. Requests must be submitted by authorized users to their provider electronically in accordance with procedures available from their provider. Physical submission of labels to the provider is not permitted.

b. Requests must be initiated for within ten (10) days of printing the indicia.

c. If a postage refund is granted, the original physical shipping label must be destroyed by the authorized user.

d. The provider may, at its discretion, charge for processing a refund request.

[Add new items 9.3.11 and 9.3.12 as follows:]

9.3.11 Unused, Dated PC Postage Indicia Without PIC

Requests for refund of dated, unused PC Postage indicia which do not have an associated PIC must be submitted as provided in 9.3.1 and as follows:

a. Must be physically submitted by authorized users to their provider, along with the items bearing the unused postage, in accordance with procedures available from their provider. Authorized users must submit the refund request within sixty (60) days of the date(s) shown in the indicia.

b. The provider may, at its discretion, charge for processing a refund request.

9.3.12 Unused Postage Value in PC Postage Systems

Authorized users must notify their PC Postage provider to withdraw a system and to refund any unused postage value remaining in that account. The provider refunds the unused postage value remaining in the user's system on behalf of the USPS. Individual customer refunds are not issued for unused postage value less than $25.00 remaining in a PC Postage system.

[Revise the title of 9.4 as follows:]

9.4 Value Added Refunds

* * * * *

9.4.14 Criteria for Mailing

A mailing for which a VAR request is submitted must meet these criteria:

* * * * *

[Add a new item 9.4.14f as follows:]

f. Each mailing refund request must be for at least $50 in postage. Customers may not combine multiple postage statements on a single Form 3533 to reach the $50 minimum threshold.

* * * * *

9.5 Express Mail Postage Refund

[Renumber current items 9.5.1 through 9.5.7 as new items 9.5.4 through 9.5.11.]

[Add new items 9.5.1 through 9.5.3 as follows:]

9.5.1 Express Mail Next Day and Second Day Delivery

For Express Mail Next Day and Second Day Delivery, the USPS refunds the postage for an item not available for customer pickup at destination or for which delivery to the addressee was not attempted, subject to the standards for this service, unless the delay was caused by one of the situations in 9.5.6, *Refunds Not Given.*

9.5.2 Express Mail Military Service (EMMS)

For EMMS, the USPS refunds postage for an item not available for customer pickup at the APO/FPO or DPO address or for which delivery to the addressee was not attempted domestically within the times specified by the standards for this service, unless the item was delayed by Customs; the item was destined for an APO/FPO or DPO that was closed on the intended day of delivery (delivery is attempted the next business day); or the delay was caused by one of the situations in 9.5.6, *Refunds Not Given.*

9.5.3 Express Mail Custom Designed

For Express Mail Custom Designed, the USPS refunds the postage for an item not available for customer pickup at destination or not delivered to the addressee within 24 hours of mailing, unless the item was mailed under a service agreement that provides for delivery more than 24 hours after scheduled presentation at the point of origin or if the delay was caused by one of the situations in 9.5.6, *Refunds Not Given.*

* * * * *

9.5.5 Conditions for Refund

[Revise the second sentence of newly renumbered 9.5.6 as follows:]

* * * Except as provided in 9.5.6, a mailer may file for a postage refund only if the item was not delivered, delivery was not attempted, or if the item was not made available for claim by the delivery date and time specified at the time of mailing.

* * * * *

9.5.6 Refunds Not Given

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or if the guaranteed service was not provided due to any of the circumstances as follows:

[Revise 9.5.6 by adding new items a. through i. as follows:]

a. The item was properly detained for law enforcement purposes (see *Administrative Support Manual* 274).

b. The item was delayed due to strike or work stoppage.

c. The item was delayed because of an incorrect ZIP Code or address; or forwarding or return service was provided after the item was made available for claim.

d. The shipment is available for delivery, but the addressee made a written request that the shipment be held for delayed delivery.

e. The shipment is undeliverable as addressed.

f. If authorized by USPS Headquarters, and the delay was caused by governmental action beyond the control of USPS or air carriers; war, insurrection, or civil disturbance; delay or cancellation of flights; projected or scheduled transportation delays; breakdown of a substantial portion of USPS transportation network resulting from events or factors outside the control of USPS; or acts of God.

g. The shipment contained live animals and was delivered or delivery was attempted within 3 days of the date of mailing.

h. The Express Mail Next Day shipment was mailed December 22 through December 25 and was delivered or delivery was attempted within 2 business days of the date of mailing.

i. The postage refund was other than for loss, and the Express Mail piece was destined to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, or the Federated States of Micronesia (see 608.2.4.1 for ZIP Codes).

* * * * *

[Insert new 9.6, Refund Request for Special Postage Payment Systems.]

9.6 Refund Request for Special Postage Payment Systems

Refund requests are decided based on the specific type of postage or mailing. A mailer's request for a refund for mailings presented using any Special Postage Payment System in 705.0 must be submitted to the manager, Business Mailer Support, USPS Headquarters (see 608.8.0 for address). Except as otherwise provided in 604.9, refunds request for postage paid through Special Postage Payment Systems are assessed an administrative processing fee equal to 10% of the total postage value of the

refund amount, regardless of whether the refund is granted or denied.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–05863 Filed 3–13–13; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120912442–3197–01]

RIN 0648–XC240

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2013 Sector Operations Plans and Contracts and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Proposed rule; request for comments.

SUMMARY: We propose to approve 18 sector operations plans and contracts for fishing year (FY) 2013, provide allocations of Northeast (NE) multispecies to these sectors, and grant regulatory exemptions. We request comment on the proposed sector operations plans and contracts; the environmental assessment (EA) analyzing the impacts of the operations plans; and our proposal to grant 25 of the 39 regulatory exemptions requested by the sectors. Approval of sector operations plans is necessary to allocate quotas to the sectors and for the sectors to operate. The NE Multispecies Fishery Management Plan (FMP) allows limited access permit holders to form sectors, and requires sectors to submit their operations plans and contracts to us, NMFS, for approval or disapproval. Approved sectors are exempt from certain effort control regulations and receive allocation of NE multispecies (groundfish) based on its members' fishing history.

Written comments must be received on or before March 29, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0007, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0007,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Allison Murphy, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* 978–281–9135; Attn: Allison Murphy.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Sector Policy Analyst, phone (978) 281–9122, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocations of a total allowable catch (TAC) for specific NE multispecies species to a sector. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the two existing sectors to comply with the expanded sector rules (summarized below), and authorized an additional 17 sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized 5 new sectors (for a total of 24 sectors). FW 48, as proposed by the New England Fishery Management Council (Council), would eliminate dockside monitoring (DSM) requirements, revise at-sea monitoring (ASM) requirements, and modify minimum sizes for NE multispecies stocks. If approved, FW 48 is expected to be in effect at the start of FY 2013 (May 1, 2013).

The FMP defines a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives.'' Sectors are self-selecting, meaning each sector can choose its members.

The NE multispecies sector management system allocates a portion of the NE multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACE). These allocations are a portion of a stock's annual catch limit (ACL) available to commercial NE multispecies vessels, and are based on the collective fishing history of a sector's members. Currently, sectors may receive allocations of most large-mesh NE multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and the Southern New England/Mid-Atlantic (SNE/MA) stock of winter flounder; however, FW 50 proposes to allocate SNE/MA winter flounder to the NE multispecies fishery. A sector determines how to harvest its ACEs and may decide to consolidate operations to fewer vessels.

Because sectors elect to receive an allocation under a quota-based system, the FMP grants sector vessels several ''universal'' exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; the Georges Bank (GB) Seasonal Closure Area; NE multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas. The FMP currently prohibits sectors from requesting exemptions from year-round mortality closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). FW 48, expected to be effective on May 1, 2013, proposes to allow sectors to request access to portions of the year-round mortality CAs that were not put in place to protect essential fish habitat. Sectors have, consequently, requested

exemptions from year-round mortality CAs in their 2013 operations plans.

We received operations plans and preliminary contracts for FY 2013 from 18 sectors, while 6 sectors did not submit operations plans or contracts. The operations plans are similar to previously approved versions, but include additional exemption requests and proposals for industry-funded ASM plans. Two sectors submitted proposals to fish when one or more of their allocations are exhausted.

We have made a preliminary determination that the proposed 18 sector operations plans and contracts, and 25 of the 39 regulatory exemptions, are consistent with the goals of the FMP and meet sector requirements outlined in the regulations at § 648.87. We summarize many of the sector requirements in this proposed rule and request comments on the proposed operations plans, the accompanying EA, and our proposal to grant 25 of the 39 regulatory exemptions requested by the sectors, but deny the rest. Copies of the operations plans and contracts, and the EA, are available at *http://www.regulations.gov* and from NMFS (see **ADDRESSES**). Northeast Fishery Sector IV and Sustainable Harvest Sector 3 propose to operate as private lease-only sectors. The Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits to active vessels.

Six sectors chose not to submit operations plans and contracts for FY 2012: The GB Cod Hook Sector; Northeast Fishery Sector I; the State of Maine Permit Bank Sector; the State of New Hampshire Permit Bank Sector; the Commonwealth of Massachusetts Permit Bank Sector; and the State of Rhode Island Permit Bank Sector. Amendment 17 to the FMP allows a state-operated permit bank to receive an allocation without needing to comply with the administrative and procedural requirements for sectors (77 FR 16942, March 23, 2012). These permit banks are required to submit a list of participating permits to us by a date specified in the permit bank's Memorandum of Agreement, typically April 1.

Sector Allocations

Sectors typically submit membership information to us on December 1 prior to the start of the FY. Due to uncertainty regarding ACLs for several stocks in FY 2013 and a corresponding delay in distributing a letter describing each vessel's potential contribution to a sector's quota for FY 2013, we have extended the deadline to join a sector until March 29, 2013. Based on sector enrollment trends from the past 3 FYs, we expect sector participation in FY 2013 will be similar to FY 2012. Thus, we are using FY 2012 rosters as a proxy for FY 2013 sector membership and calculating the FY 2013 projected allocations in this proposed rule. In addition to the membership delay, all permits that change ownership after December 1, 2012, retain the ability to join a sector through April 30, 2013. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2013, to withdraw from a sector and fish in the common pool for FY 2013. We will publish final sector ACEs and common pool sub-ACL totals, based upon final rosters, as soon as possible after the start of FY 2013.

We calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock, as proposed by FW 50. Since FW 50 includes a range of ACLs for GB yellowtail flounder, we are displaying the sector's allocation for this stock as to be determined (TBD). Table 2 shows the total percentage of each commercial sub-ACL each sector would receive for FY 2013, based on their FY 2012 rosters. Tables 3 and 4 show the allocations each sector would be allocated for FY 2013, based on their FY 2012 rosters. At the start of the FY, we provide the final allocations, to the nearest pound, to the individual sectors, and we use those final allocations to monitor sector catch. While the common pool does not receive a specific allocation, the common pool sub-ACLs have been included in each of these tables for comparison.

We do not assign an individual permit a PSC for Eastern GB cod or Eastern GB haddock; instead, we assign a permit a total PSC for these GB stocks. Each sector's GB cod and GB haddock allocation is then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod TAC and 6 percent of the commercial Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area.

At the start of FY 2013, we will withhold 20 percent of each sector's FY 2013 allocation until we finalize FY 2012 catch information. Further, we will allow sectors to transfer ACE for 2 weeks to reduce or eliminate any overages. If necessary, we will reduce any sector's FY 2013 allocation to account for a remaining overage in FY 2012. We will notify the Council and sector managers of this deadline in writing and will announce this decision on our Web site at *http://www.nero.noaa.gov/.*

BILLING CODE 3510–22–P

Table 1. Cumulative PSC (percentage) each sector would receive by stock for FY 2013.*^

Sector Name	FY 2012 Permit Count	GB Cod †	GOM Cod	GB Haddock †	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder ‡	CC/GOM Yellowtail Flounder ‡	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
GB Cod Fixed Gear Sector (Fixed Gear Sector)	106	28.297077	2.23640732	6.36202198	1.3528997	0.01254637	0.30348404	1.92651296	0.55293978	0.83687364	0.02770397	2.03791209	2.89294116	5.85484085	7.84544274	1.34631806
Maine Permit Bank	11	0.13361998	1.14926373	0.04435742	1.11977749	0.01377659	0.03202607	0.31799551	1.16454821	0.72691418	0.00021743	0.42514427	0.82162937	1.65243143	1.68807578	0.01803106
Northeast Coastal Communities Sector (NCCS)	27	0.17112756	0.72927834	0.12128594	0.34258284	0.83885015	0.72837559	0.60989424	0.14839327	0.21717413	0.0685523	0.90303141	0.44005166	0.85721153	0.44998377	0.29918253
Northeast Fishery Sector (NEFS) 2	81	6.02612811	18.2758911	11.850878	16.5160408	1.91056695	1.41448029	19.0646645	8.02317952	12.8878547	3.27779292	18.2260485	15.9754735	6.29573988	12.1623817	3.27295492
NEFS 3	81	1.26791895	15.2319478	0.14637196	9.79664549	0.00983061	0.35817239	9.1226851	4.20647888	2.94187165	0.02664237	10.5984202	1.37619617	4.79524782	7.03200715	0.81310893
NEFS 4	49	4.12296684	8.92287336	5.31633682	8.28646479	2.16227996	2.27843672	5.05397207	9.26061003	8.4819934	0.69482172	5.11101543	6.63082642	8.00860806	5.86912272	0.83260774
NEFS 5	30	1.78119394	0.08608478	3.46376281	0.30222111	6.15272726	23.4330175	0.63569904	1.13042449	1.2908881	1.84589322	0.08499373	0.23544789	0.19167961	0.25319909	12.612252
NEFS 6	19	2.85803149	2.48111142	2.9224335	3.81143265	2.69894087	5.1882894	2.86121024	3.80393566	5.08550885	1.42060745	3.68653845	5.30799653	3.91197357	3.28780047	1.92322939
NEFS 7	21	4.48460908	0.42658072	3.74884815	0.56208837	9.35817105	4.08713115	2.66916536	3.45614985	3.13696824	11.4103051	0.85367698	0.54085096	0.75160492	0.70193076	5.80539721
NEFS 8	20	6.14587542	0.49774919	5.67107922	0.21438394	10.943048	5.61467684	6.41896817	1.65093041	2.54413559	14.5667345	3.38208286	0.53508283	0.50280708	0.59747217	10.1364979
NEFS 9	61	14.5954018	1.73634215	11.8444801	4.79529081	27.9240243	8.25104857	10.5674874	8.32692051	8.30775639	42.6938424	2.43939228	5.83126789	4.15320871	4.23003223	19.1306076
NEFS 10	54	1.18665077	5.98820063	0.31250449	2.60428528	0.01729814	0.55158413	14.5290029	2.09329379	3.70172488	0.01394519	29.412036	0.56897614	0.9765518	1.51673183	1.09138866
NEFS 11	42	0.39391634	11.2178164	0.03566645	2.35454724	0.00080292	0.01738451	2.10445914	1.35253633	1.46687131	0.00089611	1.93373125	0.93657382	2.34478878	6.46137312	0.0181122
NEFS 12	11	0.01544192	2.42504165	0.00263497	0.85919914	0.00075483	0.00225958	0.4827496	0.74895981	0.60752176	0.00250316	0.31607507	1.05934489	2.49635629	2.96056082	0.00360101
NEFS 13	40	6.87095779	0.79834106	13.8229541	0.90375021	16.6707823	14.8586159	3.67078317	3.76898145	4.81822328	5.38540436	1.76812138	3.88140621	1.70573678	2.17270688	10.0915439
New Hampshire Permit Bank	4	0.002125	1.13718652	0.00025965	0.03111747	2.0573E-05	2.0334E-05	0.02180972	0.02848939	0.00615995	5.9866E-06	0.06027462	0.01939591	0.08126819	0.11089343	7.9026E-05
Maine Coast Community Groundfish Sector (MCCGS)	45	0.20828588	4.58907653	0.03757668	2.53001209	0.00351803	0.66496359	1.05176509	7.52094581	5.02756849	0.0065623	1.96277981	2.48931464	4.26339025	3.75726954	0.19387192
Sustainable Harvest Sector 1	112	18.6953063	19.2745888	32.2067928	42.1860366	12.441201	7.94376514	12.8293905	39.3694466	34.3347969	15.8851821	9.48927561	49.829961	50.1142043	38.1506488	18.3102586
Sustainable Harvest Sector 3	19	0.4304407	0.55488564	0.3671855	0.28452918	0.43792109	2.8994008	2.31123392	0.79542099	1.19740256	0.17017439	2.49489514	0.21828658	0.22534057	0.07409997	2.1209896
Tri-State Sector	18	0.6763948	0.36086124	1.44830987	0.44038621	7.25499329	1.35708849	1.33100555	0.9280913	0.85320364	1.92173843	1.39886502	0.00377571	0.0172148	0.03310197	0.21068652
Common Pool	530	1.63653031	1.8804717	0.27425965	0.70630859	1.14794574	20.0157789	2.41954577	1.66932394	1.52858837	0.58047463	3.41568986	0.40520066	0.79979478	0.64516507	11.7692812

* The data in this table are based on FY 2012 sector rosters.

^ Percentages have been rounded to two decimal places this table, but seven decimal places are used in calculating ACEs. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

† For FY 2013, 5.31 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 15.09 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

‡ SNE/MA Yellowtail Flounder refers to the SNE/Mid-Atlantic stock. CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

Table 2. Proposed ACE (in 1,000 lbs), by stock, for each sector for FY 2013.*^†

Sector Name	FY 2012 Permit Count	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder ‡	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
Fixed Gear Sector	106	57	1,070	41	527	3,148	6	TBD	4	20	17	11	2	32	646	433	2,230	36
MCCGS	45	0	8	84	3	19	10	TBD	8	11	235	68	1	31	556	315	1,068	5
Maine Permit Bank	11	0	5	21	4	22	5	TBD	0	3	36	10	0	7	184	122	480	0
NCCS	27	0	6	13	10	60	1	TBD	9	6	5	3	5	14	98	63	128	8
NEFS 2	81	12	228	334	981	5,863	68	TBD	18	201	251	173	255	287	3,568	465	3,457	87
NEFS 3	81	3	48	279	12	72	40	TBD	5	96	132	40	2	167	307	354	1,999	22
NEFS 4	49	8	156	163	440	2,630	34	TBD	29	53	290	114	54	81	1,481	592	1,668	22
NEFS 5	30	4	67	2	287	1,714	1	TBD	294	7	35	17	144	1	53	14	72	336
NEFS 6	19	6	108	45	242	1,446	16	TBD	65	30	119	68	110	58	1,186	289	935	51
NEFS 7	21	9	170	8	310	1,855	2	TBD	51	28	108	42	887	13	121	56	200	155
NEFS 8	20	12	232	9	469	2,806	1	TBD	71	68	52	34	1,133	53	120	37	170	270
NEFS 9	61	30	552	32	980	5,860	20	TBD	104	112	261	112	3,321	38	1,303	307	1,202	510
NEFS 10	54	2	45	110	26	155	11	TBD	7	153	66	50	1	463	127	72	431	29
NEFS 11	42	1	15	205	3	18	10	TBD	0	22	42	20	0	30	209	173	1,837	0
NEFS 12	11	0	1	44	0	1	4	TBD	0	5	23	8	0	5	237	184	842	0
NEFS 13	40	14	260	15	1,144	6,839	4	TBD	187	39	118	65	419	28	867	126	618	269
New Hampshire Permit Bank	4	0	0	21	0	0	0	TBD	0	0	1	0	0	1	4	6	32	0
Sustainable Harvest Sector 1	112	38	707	353	2,665	15,935	174	TBD	100	135	1,232	462	1,236	150	11,131	3,703	10,844	488
Sustainable Harvest Sector 3	19	1	16	10	30	182	1	TBD	36	24	25	16	13	39	49	17	21	57
Tri-State Sector	18	1	26	7	120	717	2	TBD	17	14	29	11	149	22	1	1	9	6
Sectors Total	851	200	3,719	1,795	8,253	49,340	409	TBD	1,005	1,030	3,078	1,324	7,733	1,522	22,247	7,331	28,241	2,354
Common	530	3	62	34	23	136	3	TBD	252	26	52	21	45	54	91	59	183	314

*The data in this table are based on FY 2012 sector rosters. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† We have used preliminary ACLs and FY 2012 membership to estimate each sector's ACE.

‡ FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

BILLING CODE 3510–22–C

Table 3. Proposed ACE (in metric tons), by stock, for each sector for FY 2013.*^†

Sector Name	FY 2012 Permit Count	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder ‡	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
Fixed Gear Sector	106	26	485	19	239	1,428	3	TBD	2	9	8	5	1	15	293	196	1,012	16
MCCGS	45	0	4	38	1	8	5	TBD	4	5	107	31	0	14	252	143	484	2
Maine Permit Bank	11	0	2	10	2	10	2	TBD	0	2	17	4	0	3	83	55	218	0
NCCS	27	0	3	6	5	27	1	TBD	4	3	2	1	2	6	45	29	58	4
NEFS 2	81	6	103	152	445	2,660	31	TBD	8	91	114	79	116	130	1,619	211	1,568	40
NEFS 3	81	1	22	126	5	33	18	TBD	2	44	60	18	1	76	139	161	907	10
NEFS 4	49	4	71	74	200	1,193	15	TBD	13	24	132	52	25	37	672	268	757	10
NEFS 5	30	2	31	1	130	777	1	TBD	134	3	16	8	65	1	24	6	33	153
NEFS 6	19	3	49	21	110	656	7	TBD	30	14	54	31	50	26	538	131	424	23
NEFS 7	21	4	77	4	141	841	1	TBD	23	13	49	19	403	6	55	25	90	70
NEFS 8	20	6	105	4	213	1,273	0	TBD	32	31	23	16	514	24	54	17	77	123
NEFS 9	61	13	250	14	445	2,658	9	TBD	47	51	118	51	1,506	17	591	139	545	231
NEFS 10	54	1	20	50	12	70	5	TBD	3	70	30	23	0	210	58	33	196	13
NEFS 11	42	0	7	93	1	8	4	TBD	0	10	19	9	0	14	95	79	833	0
NEFS 12	11	0	0	20	0	1	2	TBD	0	2	11	4	0	2	107	84	382	0
NEFS 13	40	6	118	7	519	3,102	2	TBD	85	18	54	29	190	13	393	57	280	122
New Hampshire Permit Bank	4	0	0	9	0	0	0	TBD	0	0	0	0	0	0	2	3	14	0
Sustainable Harvest Sector 1	112	17	321	160	1,209	7,228	79	TBD	45	61	559	209	560	68	5,049	1,680	4,919	222
Sustainable Harvest Sector 3	19	0	7	5	14	82	1	TBD	17	11	11	7	6	18	22	8	10	26
Tri-State Sector	18	1	12	3	54	325	1	TBD	8	6	13	5	68	10	0	1	4	3
Sectors Total	851	90	1,687	814	3,744	22,380	186	TBD	456	467	1,396	601	3,508	690	10,091	3,325	12,810	1,068
Common	530	2	28	16	10	62	1	TBD	114	12	24	9	20	24	41	27	83	142

*The data in this table are based on FY 2012 rosters. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† We have used preliminary ACLs and FY 2012 membership to estimate each sector's ACE.

‡ FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

Sector Operations Plans and Contracts

We received 18 sector operations plans and contracts by the September 4, 2012, deadline. Each sector has elected to submit a single document that is both its contract and operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds each member to the sector. The sector formerly known as the Port Clyde Community Groundfish Sector has submitted its operations plan under a new name, the Maine Coast Community Groundfish Sector. Despite the extended time for joining a sector, most sectors have already demonstrated that at least three members plan to join the sector for FY 2013. The Tri-State Sector has not yet complied with this requirement, and will not be approved in the final rule unless it can demonstrate that three members plan to join the sector. Most sectors proposed operations plans are for a single FY, i.e., FY 2013. NEFS 4 submitted a 2-year operations plan, however, because the EA only analyzes operations in FY 2013, we are only proposing to approve NEFS 4 to operate in FY 2013. Each sector's operations plan, and sector members, must comply with the regulations governing sectors, which are found at § 648.87. In addition, each sector must conduct fishing activities as detailed in its approved operations plan.

Any permit holder with a limited access NE multispecies permit that was valid as of May 1, 2008, is eligible to participate in a sector, including an inactive permit currently held in confirmation of permit history (CPH). If a permit holder officially enrolls a permit in a sector and the FY begins, then that permit must remain in the sector for the entire FY, and cannot fish in the NE multispecies fishery outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted in the letter of authorization (LOA) issued by the Regional Administrator, which details any approved exemptions from regulations. If, during a FY, a sector requests an exemption that we have already approved, or proposes a change to administrative provisions, we may amend the sector operations plans. Should any amendments require modifications to LOAs, we would include these changes in updated LOAs and provide these to the appropriate sector members.

Each sector is required to ensure that it does not exceed its ACE during the FY. Sector vessels are required to retain all legal-sized allocated NE multispecies stocks, unless a sector is granted an exemption allowing its member vessels to discard legal-sized unmarketable fish at sea. Catch (defined as landings and discards) of all allocated NE multispecies stocks by a sector's vessels count against the sector's allocation. Catch from a sector trip (e.g., not fishing under provisions of a NE multispecies exempted fishery or with exempted gear) targeting dogfish, monkfish, skate, and lobster (with non-trap gear) would be deducted from the sector's ACE because these trips use gear capable of catching groundfish. Catch from a trip in an exempted fishery does not count against a sector's allocation because the catch is assigned to a separate ACL sub-component.

We provide sectors with calculated discard rates to apply to unobserved sector trips, based on discard rates from observed trips. Amendment 16 required sectors to develop independent third-party DSM programs to verify landed weights reported by the dealer. We previously funded DSM for FY 2010 and part of FY 2011, but suspended DSM for the remainder of FY 2011 and 2012. However, the Council, through FW 48, has proposed to eliminate the requirement for DSM for FY 2013. Therefore, as the most conservative option, we are proposing the sector's DSM programs as described in their operations plans, which mirror standards included in the regulations at § 648.87b)(5).

For FYs 2010 and 2011, there was no requirement for an industry-funded ASM program, but NMFS was able to fund an ASM program with a target ASM coverage rate of 30 percent of all trips. For FY 2012, we conducted an analysis to determine the FY 2012 ASM coverage rate that would be necessary to achieve the same level of precision as attained by the target 30-percent ASM coverage rate used for FY's 2010 and 2011, and ultimately set a target ASM coverage rate for FY 2012 of 25 percent, which was 17 percent more than the 8-percent Northeast Fishery Observer Program (NEFOP) coverage that supports the Standardized Bycatch Reporting Methodology (SBRM) and stock assessments.

Sectors are required to design, implement, and fund an ASM program in FY 2013 that will provide a level of ASM coverage specified by NMFS. Amendment 16 regulations require NMFS to specify a level of ASM coverage that is sufficient to at least meet the same coefficient of variation (CV) specified in the SBRM and also to accurately monitor sector operations. FW 48 includes proposed provisions intended to clarify what level of ASM coverage is expected to meet these goals. Regarding meeting the SBRM CV level, FW 48 proposes that this determination should be made at the overall stock level which is consistent with the level NMFS determined was necessary in FY 2012. FW 48 also amends the goals of the sector monitoring program to include achieving an accuracy level sufficient to minimize effects of potential monitoring bias.

Taking these proposed provisions of FW 48 into account, and interpreting the ASM monitoring provision in the context of Magnuson-Stevens Act requirements and National Standards, we have determined that the appropriate level of ASM coverage should be set at the level that meets the CV requirement specified in the Standardized Bycatch Reporting Methodology and minimizes the cost burden to sectors and NMFS to the extent practicable, while still providing a reliable estimate of overall catch by sectors needed for monitoring ACEs and ACLs. Based on this standard, NMFS has determined that the appropriate ASM coverage rate for FY 2013 is 14 percent, in addition to the expected 8-percent coverage rate provided under NEFOP. We expect these two programs to result in coverage of 22 percent of all sector trips, and we will use the discards from these observed and monitored trips to calculate discards for unobserved sector trips. We have published a more detailed summary of the supporting information, explanation and justification for this decision at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf.*

This summary, in addition to providing sectors and the public with a full and transparent explanation of the appropriate level of ASM coverage of sector operations, complies with a settlement agreement entered into by NMFS and Oceana, Inc. The settlement agreement resolved a lawsuit brought by Oceana challenging the approval of the 2012 sector operations plans primarily on grounds that the agency failed to adequately justify and explain that the ASM coverage rate specified for FY 2012 would accurately monitor the catch to effectively enforce catch limits in the groundfish fishery.

FW 48 includes an option to remove the requirement for industry to pay for ASM coverage in FY 2013, but the decision to approve or disapprove this proposed measure will be made by NMFS in its review of FW 48. Therefore, as the most conservative option, we are

proposing the sector's ASM programs as described in their operations plans. We gave sectors the option to design their own programs in compliance with regulations, or opt for the program that we have previously utilized during FYs 2010–2012. ASM programs proposed by the sectors are described in detail later in this rule.

Sectors are required to monitor their allocations and catch, and submit weekly catch reports to us. If a sector reaches an ACE threshold (specified in the operations plan), the sector must provide sector allocation usage reports on a daily basis. Once a sector's allocation for a particular stock is caught, that sector is required to cease all fishing operations in that stock area until it acquires more fish, unless that sector has an approved plan to fish without ACE for that stock. ACE may be transferred between sectors, but transfers to or from common pool vessels is prohibited. Within 60 days of when we complete year-end catch accounting, each sector is required to submit an annual report detailing the sector's catch (landings and discards), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts of each sector.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides sector managers with the authority to issue stop fishing orders to sector members who violate provisions of the operations plan and contract. A sector and sector members can be held jointly and severally liable for ACE overages, discarding legal-sized fish, and/or misreporting catch (landings or discards). Each sector operations plan submitted for FY 2013 states that the sector would withhold an initial reserve from the sector's ACE sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract details the method for initial ACE sub-allocation to sector members. For FY 2013, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector.

Requested FY 2013 Exemptions

Sectors requested 39 exemptions from the NE multispecies regulations through their FY 2013 operations plans. We evaluate each exemption to determine whether it is consistent with the goals and objectives of the FMP. Requests are grouped into several categories in this rule: Exemptions previously approved that we propose to approve for FY 2013 (numbers 1–16); exemptions previously approved for which we have concern (17–19); requested exemptions that were previously denied, but we are proposing for approval (numbers 20–22); new exemption requests we propose to approve for FY 2013 (numbers 23–25); requested exemptions that we propose to deny because they are being considered in a future rulemaking (26–30); requested exemptions that we propose to deny because they are prohibited (numbers 31–35), and requested exemptions that we propose to deny because they were previously rejected and no new information was provided (numbers 36–39). A discussion of the 25 exemptions proposed for approval appears below. We request public comment on the proposed sector operations plans and our proposal to grant 25 requested exemptions and deny 14 requested exemptions, as well as the EA prepared for this action. We are particularly interested in receiving comments on several exemptions and other sector provisions, as discussed below.

Exemptions We Propose To Approve in FY 2013 (1–16)

In FY 2012, we exempted sectors from the following requirements, all of which have been requested for FY 2013: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) prohibition on a vessel hauling another vessel's gillnet gear; (4) limits on the number of gillnets that may be hauled on GB when fishing under a NE multispecies/monkfish DAS; (5) limits on the number of hooks that may be fished; (6) DAS Leasing Program length and horsepower restrictions; (7) prohibition on discarding; (8) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (9) powering vessel monitoring systems (VMS) while at the dock; (10) DSM for vessels fishing west of 72° 30′ W. long.; (11) DSM for Handgear A-permitted sector vessels; (12) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA); (13) Prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (14) 6.5-inch (16.51-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM, including the use codend mesh size as small as 4.5-inch (11.4-cm); (15) Prohibition on a vessel hauling another vessel's hook gear; and (16) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. A detailed description of these 16 previously approved exemptions can be found in the FY 2012 proposed rule for sector operations (77 FR 8780, February 15, 2012), which is also available at: *http://www.nero.noaa.gov/sfd/multifr/77FR8780.pdf.*

Recently, we expanded the exemption from 6.5-inch (16.51-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM, to include the use of codend mesh size as small as 4.5-inch (11.4-cm) (78 FR 14226, March 5, 2013) which is available at: *http://www.nero.noaa.gov/regs/2013/March/13redfishfr.pdf.* We approved this exemption based on catch information from ongoing research. Along with the exemption that would allow sectors to use a codend with mesh as small as 4.5 inches (11.43 cm) when an observer or at-sea monitor is onboard, we provided sectors with the opportunity to develop industry-funded at-sea monitoring programs for trips specifically targeting redfish. Monitoring all trips targeting redfish is necessary to adequately monitor bycatch thresholds and ensure compliance.

For 2013, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns about the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips utilizing the 4.5-inch (11.4-cm) redfish exemption are not representative of standard sector trips, we are concerned that including

the data from the 4.5-inch (11.4-cm) redfish exemption in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we propose to allow sectors to use the 4.5-inch (11.4-cm) redfish exemption only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption if a federally funded observer or at-sea monitor is onboard. Sectors using this exemption would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent of 4.5-inch (11.4-cm) redfish exemption trips. A sector vessel wishing to use this exemption would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that use the 4.5-inch (11.4-cm) redfish exemption.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of the 4.5-inch (11.4-cm) redfish exemption and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke the 4.5-inch (11.4-cm) redfish exemption during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of these exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption during the FY, if necessary to mitigate impacts.

Exemptions of Concern That We Previously Approved (17–19)

In FY 2012, we granted sectors exemptions from the following requirements, all of which have been requested again for FY 2013: (17) Limits on the number of gillnets imposed on Day gillnet vessels; (18) the GOM sink gillnet mesh exemption in May, and January through April; and (19) gear requirements in the Eastern U.S./Canada Management Area. We are concerned about continuing to grant these requests based on data analyzed for this rule and are requesting additional comment on these exemptions. Below is a description of these exemptions and our concerns:

17. Limits on the Number of Gillnets Imposed on Day Gillnet Vessels

The NE Multispecies FMP limits the number of gillnets a Day gillnet vessel may fish in the groundfish regulated mesh areas (RMA) to prevent an uncontrolled increase in the number of nets being fished, thus undermining the applicable DAS effort controls. The limits are specific to the type of gillnet within each RMA: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). We previously approved this exemption in FYs 2010, 2011, and 2012 to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA to provide greater operational flexibility to sector vessels in deploying gillnet gear. Sectors argued that the gillnet limits were designed to control fishing effort and are no longer necessary because sectors' ACEs limit overall fishing mortality. However, a preliminary effort analysis of all sector vessels using gillnet gear indicates an increase in gear used in the RMA with no corresponding increase in catch efficiency, resulting in no increase in efficiency and more gear being deployed, which could lead to an increase in interactions with protected species. We are concerned that continued approval of the exemption on gillnet limits could ultimately lead to a rise in interactions with protected species and are requesting comment on approving this exemption for FY 2013.

18. GOM Sink Gillnet Mesh Exemption in May, and January Through April

The minimum mesh size requirements of 6.5 inches (16.5 cm) in the GOM RMA was implemented to reduce overall mortality on groundfish stocks, to reduce discarding, and improve survival of sub-legal groundfish. We previously approved two separate seasonal exemptions from the minimum mesh size requirement in the GOM for FYs 2010–2012 to allow a sector vessel to use 6-inch (15.24-cm) mesh stand up gillnets in the GOM RMA. The initial exemption allowed use of the exemption January-April. The second exemption added the month of May. We are now combining these requests into a single exemption. Both exemptions provide the opportunity to catch more GOM haddock, a stock previously considered rebuilt, during the months that haddock are most prevalent.

A sector vessel using this exemption would be prohibited from using tie-down gillnets in the GOM during this period. Sector vessels may transit the GOM RMA with tie-down gillnets, provided the nets are properly stowed and not available for immediate use in accordance with one of the methods specified at § 648.23(b). Day gillnet vessels in sectors granted the exemption from Day gillnet net limits (exemption 17) will not be subject to the general net limit in the GOM RMA, and will be able to fish up to 150 nets in the GOM RMA. If approved, the LOA issued to a sector vessel that requests this exemption would specify the 150 net restriction to help ensure that the provision is enforceable. If approved, The LOA would not include limits for trip gillnet vessels, because there is currently no limit on the number of nets that participating Trip gillnet vessels may fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

We have two concerns for which we are seeking comment. First, we officially notified the Council on May 30, 2012, that the GOM haddock stock is subject to overfishing and is approaching an overfished condition, based on results from an operational stock assessment. As the GOM haddock ACL and corresponding sector ACEs are reduced, GOM haddock may become a limiting stock, and a sector may no longer need to deploy nets below the minimum mesh size to catch its allocation.

Second, we previously authorized vessels granted this exemption to fish up to 150 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA, and are proposing the same 150 6-inch (15.24-cm) mesh stand-up gillnet limit for FY 2013; however, we are concerned that additional nets could lead to an increase in interactions with protected species, as described in Exemption 17. Given

these concerns, we request public comment on the feasibility of allowing up to 150 nets when fishing under this exemption, as well as overall approval of the GOM Sink Gillnet Mesh exemption in FY 2013.

19. Gear Requirements in the Eastern U.S./Canada Management Area

The regulations require a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area to use either a Ruhle trawl, a haddock separator trawl, or a flounder trawl (§ 648.85(a)(3)(iii)) to ensure that the U.S./Canada quotas are not exceeded. We approved an exemption from this requirement in FYs 2011 and 2012 to enhance operational flexibility of sectors, reasoning that their overall fishing mortality would continue to be restrained by the sector ACEs.

The proposed FY 2013 ACLs for GB cod and GB yellowtail flounder approved by the Council in FW 50 are dramatically smaller than previous years when we granted this exemption. While each sector remains constrained by its ACE, continued approval of this exemption could limit a sector's ability to target the relatively healthy GB haddock stock. Use of less-selective gears under this exemption could inadvertently hasten the catch of GB cod and yellowtail flounder. This would result in sectors catching their entire FY 2013 allocation for these stocks before they can catch their allocation of GB haddock.

The SAP exemptions discussed below also provide the opportunity for a vessel to catch GB haddock during particular seasons as long as the vessel is using selective gear. Since these SAPs are geographically within the Eastern U.S./Canada Area, extending this gear exemption to the SAP areas may be inconsistent with the original intent of the SAPs. Because of our concern, we propose to restrict this exemption from gear requirements to areas outside of any SAP and are seeking comment on this approach.

Previously Disapproved Exemptions Under Consideration for Approval (20–22)

Sectors requested previously disapproved exemptions from the following requirements for FY 2013: (20) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (21) seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; and (22) DSM requirements for vessels using hand-operated jig gear. A detailed description of each exemption is included below:

20. Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP consists of a portion of the Eastern U.S./Canada Area and a portion CA II. We implemented this SAP in FW 40A to provide a vessel with additional opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The May 1 through December 31 opening of the SAP allowed a vessel to fish in the area using gear that reduces the catch of cod and other stocks of concern. In FW 42 (71 FR 62156; October 23, 2006), we extended the approval of this SAP and shortened the season to August 1 through December 31 to further reduce cod catch. We subsequently approved additional gear types for use in this SAP through other actions.

For FY 2012, sectors requested an exemption from the seasonal restrictions of the Eastern U.S./Canada Haddock SAP, to access the SAP area year-round. Because it was unclear whether the Council intended to allow or prohibit access to these SAPs, we disapproved these exemptions for FY 2012. We subsequently proposed the exemption, but expressed concern that an exemption from the seasonal restrictions of SAPs could have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn. The Council subsequently discussed these exemptions in June 2012. In a letter dated June 22, 2012, the Council asked us to open the Eastern U.S./Canada Haddock SAP to trawl vessels using selective gear on May 1, which would provide additional fishing opportunities for the NE multispecies fishery to target healthy stocks.

Sectors argue that because their catch is restricted by ACE, their access to the SAP area, including the northern tip of CA II, should not be seasonally restricted. Sectors further argue that impacts to the physical environment and essential fish habitat (EFH) will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC).

Data provided by the NMFS Northeast Fisheries Science Center (NEFSC) suggest that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. Therefore, we are concerned that granting this exemption year round, as requested by the sectors, may negatively affect allocated stocks by allowing an increase in effort in a time and place where those stocks aggregate to spawn. We propose to extend the SAP season, which typically is open from August 1 through December 31; however, due to spawning concerns, we are proposing to allow access to this area from June 1 through December 31, and request comment on whether this limited season is appropriate. For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. To remain consistent with the Council's June 22, 2012, request, we propose limiting a sector vessel to using selective trawl gear when fishing in this SAP.

21. Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP

We implemented the CA II Yellowtail Flounder SAP through Amendment 13 in 2004 to provide an opportunity for vessels to target yellowtail flounder in CA II on a Category B DAS. This SAP requires a vessel to use either a flounder net or other gears approved for use in the Eastern U.S./Canada Area during the open season from June 1 through December 31. In 2005, we extended the approval of this SAP though FW 40B, but shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Through Amendment 16, we further revised this SAP in 2010 by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open for targeting of GB yellowtail flounder. Sectors are currently required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When the season is open only to target haddock, a vessel may only use approved trawl gear or hook gear; the flounder net is not authorized. We implemented these gear requirements to limit vessels from catching yellowtail flounder when the SAP was open only for targeting haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail Flounder/Haddock SAP provides access to a large area of CA II. Sectors are required to use the same approved gears as the common pool (i.e., haddock separator trawl, Ruhle trawl, or hook gear) to reduce the advantage sector vessels have over common pool vessels. We initially put the seasonal restriction in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the

summer, and spawning NE multispecies in the spring. Sectors argue that their catch is restricted by ACE and their access to the SAP area in CA II should not be restricted. Sectors further argue that impacts to the physical environment and EFH will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC).

Data provided by the NEFSC suggest that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. For FY 2013, we are concerned that granting this exemption year round may negatively effect allocated stocks by allowing an increase in effort in a time and place where those stocks aggregate to spawn. We are proposing to extend the SAP season, which typically is open from August 1 through January 31; however, due to spawning concerns we are proposing to allow access to this area from June 1 through January 31, and request comment on whether this limited season is appropriate. For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. To remain consistent with the Council's June 22, 2012, request, we propose limiting a sector vessel to using selective trawl gear when fishing in this SAP.

22. DSM Requirements for Vessels Using Hand-Operated Jig Gear

In the NE multispecies fishery, we define jigging as fishing with handgear, handline, or rod and reel gear using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, and which is moved with an up and down motion (§ 648.2). Jigging gear is not exempted gear and, therefore, a vessel using this gear is required to participate in the DSM program so that offload of all NE multispecies trips are adequately monitored.

We received a request to exempt sector vessels using jig gear from DSM requirements, noting that vessels utilizing this gear type are able to target cod with little incidental catch of other allocated groundfish species. The sector argues that the cost of monitoring these trips is disproportionately high, due to the comparatively small amount of catch that this gear type yields.

To gauge the potential impact of approving this exemption, we reviewed observer and ASM data from the 12 monitored trips in FYs 2010 and 2011 that used jig gear. For these trips, discards accounted for approximately 6 percent of the roughly 16,000 lb (7,257 kg) of catch. We believe these discards to be a *de minimis* amount, and are proposing this exemption for approval. This exemption request may be unnecessary, if we approve a proposed provision in FW 48 that would remove DSM requirements beginning in FY 2013.

New Exemptions Proposed for FY 2013 (23–25)

Sectors requested three new exemptions from the following requirements for FY 2013: (23) The prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard; (24) prohibition on combining small-mesh exempted fishery and sector trips; and (25) sampling exemption. A detailed description of each exemption is included below:

23. Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder on Board

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder (§ 648.85(b)(6)(v)(F)). A vessel with GOM or GB winter flounder on board may transit through the SNE/MA winter flounder stock area, but may not fish in the SNE/MA winter flounder stock area, and its gear must be stowed in accordance with the provisions of § 648.23(b). This restriction is in place to ensure that the winter flounder on board the vessel did not come from the SNE/MA winter flounder stock area.

Sectors have requested an exemption from the prohibition on fishing in the SNE/MA winter flounder stock area when GOM or GB winter flounder is on board the vessel when either a NEFOP observer or an at-sea monitor is onboard. Sectors assert that the data collection protocols used by observers and at-sea monitors, including documentation of catch (both landings and discards), as well as stock area, would provide the data necessary to differentiate the catch of winter flounder and correctly apportion the winter flounder onboard to the appropriate stock area. Sectors believe that, if approved, this exemption would increase flexibility and efficiency of fishing vessels, allowing vessels to move freely between stock areas when an observer or at-sea monitor is onboard, increase gross revenue per trip, and decrease operating costs.

As explained above, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and we are proposing to require industry-funded monitoring on 100 percent of trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since a trip returning to fish in the SNE/MA winter flounder stock area with winter flounder onboard is not representative of standard sector trips where this behavior is not allowed, we are concerned that including the data from these exemption trips in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are considering allowing sectors to fish in the SNE/MA winter flounder stock area with winter flounder onboard only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption if a federally funded observer or at-sea monitor is onboard. Sectors using this exemption may therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption trips. A sector vessel wishing to fish in the SNE/MA winter flounder stock area with winter flounder onboard would likely not call into PTNS, but would likely provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would likely require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that use a closed area exemption.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that

100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved in a future action, we would monitor the impacts of fishing in the SNE/MA winter flounder stock area with winter flounder onboard and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this exemption during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

At its January 30, 2013, meeting, the Council approved a motion to set an ACL for the SNE/MA winter flounder stock for the commercial fishery, and allocate this stock to sectors. Final approval of these measures will be considered in FW 50. If this FW 50 measure is approved, this exemption is no longer needed. We propose this exemption in the event that the FW 50 measure is disapproved. If approved, this exemption may require increased attention to the winter flounder stocks, but we believe that it will remain feasible to adequately monitor catch. However, as we will be relying on observer/monitor data to monitor this exemption, we have some concern that observers and at-sea monitors could be viewed as playing an enforcement role in this situation.

24. Prohibition on Combining Small Mesh Exempted Fishery and Sector Trips

We implemented minimum mesh size restrictions for the GOM, GB, and SNE regulated mesh areas (RMAs) (§ 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i)) under Amendment 13 (69 FR 22906, 4/27/04) and FW 42, to reduce overall mortality on groundfish stocks, change the selection pattern of the fishery to target larger fish, improve survival of sublegal fish, and allow sublegal fish more opportunity to spawn before entering the fishery. FW 42 set requirements for trawl codends in the SNE RMA to be made of either square or diamond mesh no smaller than 6.5 inches (16.51 cm), in an effort to reduce discards of yellowtail flounder and increase the rate of yellowtail flounder rebuilding.

Approved large and small mesh exempted fisheries, as described in the regulations, allow a vessel to fish for particular species, such as whiting or northern shrimp, in designated areas using mesh sizes smaller than the minimum mesh size allowed in each regulated mesh area. To approve an exempted fishery, after consultation with the Council, we must determine minimal bycatch of regulated NE multispecies (i.e., less than 5 percent, by weight, of total catch), and that the exempted fishery will not jeopardize fishery mortality objectives, publish a proposed rule, solicit comment, and publish a final rule. Exempted fishery regulations allow vessels to fish with small mesh, but prohibit the retention of regulated NE multispecies.

Sectors requested an exemption that would allow their vessels to possess and use both small mesh in an exempted fishery, and large mesh as they normally would on a standard sector trip, on the same fishing trip for the following small-mesh exemption areas: The Cultivator Shoal Whiting Fishery Exemption Area, the Southern New England Small Mesh Exemption Area, and the Mid-Atlantic Small Mesh Exemption Area. The Cultivator Shoal Whiting Fishery is open annually from June 15 through October 31. A vessel participating in this exempted fishery must obtain an LOA, comply with specific gear requirements, may not possess regulated NE multispecies species, and must properly stow gear capable of catching NE multispecies. A vessel may participate in either the SNE or MA Small Mesh exempted fishery year-round, without needing an LOA.

Sectors have stated that they would only utilize this exemption when either a NEFOP observer or an at-sea monitor is aboard the vessel. The sectors propose to count any allocated NE multispecies caught on these combined trips against the sector's allocation. The goal is to allow a vessel to engage in exempted fisheries while on a sector trip and to increase efficiency of time at sea and gross revenue per trip while decreasing vessel-operating costs.

We have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and we propose to require industry-funded monitoring on 100 percent of trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since a vessel fishing combining sector and small-mesh trips are not representative of standard sector trips, we are concerned that including the data from this exemption in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we propose to allow a sector vessel to combine sector and small-mesh trips only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption if a federally funded observer or at-sea monitor is onboard. Sectors combining sector and small-mesh trips would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption trips. A sector vessel wishing to use this exemption would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip.

To aid in identifying these trips, a vessel intending to utilize this exemption on a sector trip would be required to submit a trip start hail identifying the trip as one that will fish on a sector trip and in one of the small mesh exempted fishery areas under the exemption. Since behavior on a trip using this exemption may differ from another standard sector trip, data from a trip using this exemption would not be applied to the calculated discard rate for unobserved trips, nor would the trip count toward the targeted ASM coverage rate for that stratum. To ensure that this

exemption does not negatively affect fish stocks, we would establish a catch threshold that, if exceeded by a sector, could result in the NMFS Northeast Regional Administrator rescinding the approval of this exemption for that sector. To help mitigate catches of groundfish in these exempted fisheries, total groundfish discards would not be allowed to exceed 5 percent of all catch when trawling with small-mesh nets. This threshold was determined to be consistent with incidental catch information used to establish these exempted fishery programs. We would retain the authority to further adjust this threshold, if necessary, to help ensure that vessels are catching minimal amounts of groundfish when fishing with small-mesh nets under this exemption. We request comment on our approach to this exemption.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

We have some concern that, through this exemption, a vessel could target allocated NE multispecies with small mesh, and therefore increase catch of juvenile fish, negatively affecting fish stocks. Currently, large and small-mesh exempted fishery trips are only subject to the 8-percent NEFOP monitoring requirements, and do not receive ASM coverage. Therefore, the vast majority of NEFOP observers and at-sea monitors do not receive the training necessary to accurately observe the small-mesh portion of these trips as proposed, and we are concerned about accurately monitoring both portions of these proposed trips. In addition, we have some concern that observers and at-sea monitors could be viewed as playing an enforcement role when monitoring these trips as proposed. If approved, we would monitor the impacts of combining sector and small-mesh trips and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this exemption during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

25. Sampling Exemption

Conducting scientific research on regulated fishing trips may require special permits, depending on the activities proposed. A temporary research permit authorizes a federally permitted fishing vessel that is accompanied by a research technician, typically staff for the principal investigator, to temporarily retain fish that are not compliant with applicable fishing regulations to collect catch data such as length and weight. Under a temporary possession permit, a vessel may be exempt from specific regulations, including: Minimum fish sizes, closures, and possession limits. Sampled fish are returned to the sea as soon as practicable after sampling.

Some sectors proposed independent sampling programs, where data would be collected from fish that otherwise must be immediately discarded, as described above. Since sectors already provide much of the information required in an application as part of the sector's operations plan, we propose to approve sectors for temporary possession permits for research purposes. If approved, this provision would be included in a sector vessel's LOA, which will aid enforcement officials in determining approved activities, with the same restrictions as when a temporary permit is obtained through the application process.

Exemptions We Propose To Deny for FY 2013 Due to Separate Rulemaking

Amendment 16 prohibited sectors from requesting access to year-round closured areas. To increase operational flexibility for vessels participating in sectors as mitigation for reduced ACLs, the Council has included a measure in FW 48 to allow a sector to request access to year-round mortality closure areas through its sector operations plan. Sectors would not be allowed to request access to areas that are closed to protect EFH.

Sectors have requested exemptions for access to the following five year round CAs: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; and (30) year-round access to the Nantucket Lightship Closed Area. Including these five exemption requests in this rulemaking could delay the approval of sector operations plans and allocations beyond May 1, 2013, due to the rigorous analysis necessary. We intend to deny all exemption requests for access to year-round mortality CAs through this rule, but intend to consider all exemption requests for access to year-round mortality closured areas in a separate action, and anticipate implementation of that action early in FY 2013.

While analysis of these exemptions and development of additional requirements to fish in CAs is not yet complete, we are considering requiring 100 percent monitoring on trips using CA exemptions. As explained above, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trip using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips in the closed areas may not be representative of standard sector trips, we are concerned that including the data from these exemptions in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are considering allowing sectors to fish in closed areas only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using these exemptions if a federally funded observer or at-sea monitor is onboard.

Sectors fishing in a closed area may therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption trips. A sector vessel wishing to use this exemption likely would not call into PTNS, but would likely provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we may require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that fishes in a closed area.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that 100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of fishing in closed areas and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke these exemptions during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

Requested Exemptions We Propose To Deny Because They Are Prohibited

We propose denying, and do not analyze in the EA, the following five exemption requests, because they are prohibited or not authorized by the NE multispecies regulations: (31) ASM requirements; (32) ASM requirements for vessels using jig gear; (33) ASM requirements for handgear vessels; (34) Year-round access to the Eastern U.S./Canada Area for trawl vessels; and (35) the prohibition on a vessel hauling another vessel's trap gear.

Sectors are prohibited from requesting exemptions from permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements and DSM requirements). In a letter dated September 1, 2010, we notified the Council that we interpret the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see **ADDRESSES**), we also requested that the Council define which reporting requirements sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM. Therefore, we will not consider requests for exemptions from ASM.

We propose to deny two additional FY 2013 exemption requests (year-round access to the Eastern U.S./Canada Area for trawl vessels and the prohibition on a vessel hauling another vessel's trap gear) because they fall outside the authorization for exemptions provided in the NE multispecies regulations. The Regional Administrator may impose restrictions or in-season adjustments on a vessel fishing in the Eastern U.S./Canada Area, consistent with the Administrative Procedure Act, including: Gear restrictions; modification of access to the area or the number of trips in the area; or closure of the area to prevent over-harvesting or to facilitate achieving a quota. Since this discretion is left to the Regional Administrator, this request will be considered when determining access to the Eastern U.S./Canada Area, but cannot be considered under the exemption process. Also, tagging requirements for trap gear are not included in the NE multispecies regulations. Vessels holding an American lobster permit are bound by the American lobster tagging requirements.

Requested Exemptions We Propose To Deny Because They Were Previously Rejected and No New Information Was Provided

We propose to deny the following four exemption requests because they were previously rejected, and the requesting sectors provided no new information that would change our previous decision: (36) Minimum Hook Size for Demersal Longline; (37) Access to the April GOM Rolling Closure (Blocks 124 and 132); (38) Access to the May GOM Rolling Closure (Block 138); and (39) all DSM requirements. We did not analyze these exemptions in the FY 2013 sector EA because no new information was available to change the analyses previously published in past EAs. Detailed information on these exemption requests and the reasons they were previously denied is contained in the proposed and final sector rule for FY 2012 (77 FR 8780, February 15, 2012; and 77 FR 26129, May 2, 2012, respectively), and its accompanying EA (as well as previous years' rules and EAs).

Additional Sector Provisions

Provisions To Fish Without ACE

Under regulations at § 648.87(b)(2)(xiv), a sector may propose a program to fish on a sector trip in fisheries that are known to have a bycatch of NE multispecies when it does not have ACE for certain NE multispecies stocks, if the sector can show that the limiting NE multispecies will be avoided. The regulations currently restrict this provision to participation in other fisheries (e.g., dogfish, monkfish, and skate) that have a bycatch of groundfish that would count against the sector's ACE. We had intended to make a correction to this regulation to make the regulations consistent with Section 4.2.3.4 (Mortality/Conservation Controls) of Amendment 16, which would allow a sector to request authorization to target allocated NE multispecies under this provision in FY 2013. That section of Amendment 16 specified that a sector operations plan should detail ''* * * a plan for operations or stopping once the ACEs of one or more species are taken.'' That paragraph concluded by stating, ''The plan must provide assurance that the sector would not exceed the ACEs allocated to it (either through landings or discards).'' Knowing that we intended to make this correction, sectors submitted requests to target allocated NE multispecies stocks. However, based on a review of Amendment 16, we believe that additional impacts analysis may be necessary, and intend to make this correction in a future action for FY 2014.

Prior to developing requests to fish with no ACE for a particular stock, we provided sectors with guidance that they must provide specific operational requirements (location, time, and gear), the species or stocks they intend to target, and demonstrate zero catch of any stock for which they do not have ACE (''limiting stock'') using their observer and ASM data from FY 2011. We received multiple requests from the GB Cod Fixed Gear Sector and NEFS 5

to fish under this provision. These requests are summarized in the table below.

TABLE 4—SECTOR REQUESTS TO FISH WITH NO ACE

Requesting sector	Target stock	Limiting stock	Season	Location (statistical area)	Gear restrictions	Overlap with existing exempted fishery?†
NEFS 5	Monkfish	GB West Cod	September thru April.	539, 613 and 616	Trawl	Yes.
NEFS 5	Monkfish	GB Yellowtail	June	522	Trawl	No.
NEFS 5	Summer Flounder.	GB West Cod	October thru April	611, 613 and 616	Trawl	No.
NEFS 5	Little Skate (bait)	GB West Cod	February	537 and 613	Trawl	Yes.
NEFS 5	Winter Skate Wing.	GB West Cod	June	522	Trawl	No.
NEFS 5	Witch flounder	GB West Cod	February thru April.	539	Trawl	No.
NEFS 5	GB yellowtail flounder.	GB West Cod	January thru April	525 and 613	Trawl	No.
Fixed Gear Sector	Monkfish	one or more ACE stocks.	November through June.	521	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector	Monkfish	one or more ACE stocks.	Year-round	526	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector	Monkfish	one or more ACE stocks.	May through March.	537	Extra Large Mesh Gillnet.	Yes.
Fixed Gear Sector	Spiny Dogfish	one or more ACE stocks.	Year-round	521	Extra Large Mesh Gillnet.	Yes.
Fixed Gear Sector	Spiny Dogfish	one or more ACE stocks.	Year-round	526	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector	Winter Skate	one or more ACE stocks.	November through June.	521	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector	Winter Skate	one or more ACE stocks.	Year-round	526	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector	Winter Skate	one or more ACE stocks.	Year-round	537	Extra Large Mesh Gillnet.	Yes.
Fixed Gear Sector	Spiny Dogfish	one or more ACE stocks.	Year-round	514	Large Mesh Gillnet.	Yes.
Fixed Gear Sector	Spiny Dogfish	one or more ACE stocks.	August through June.	521	Large Mesh Gillnet.	Yes.*
Fixed Gear Sector	Winter Skate	one or more ACE stocks.	Year-round	521	Large Mesh Gillnet.	No.
Fixed Gear Sector	Spiny Dogfish	one or more ACE stocks.	Year-round	514	Longline	No.
Fixed Gear Sector	Spiny Dogfish	one or more ACE stocks.	September through June.	521	Longline	Yes.*
Fixed Gear Sector	Spiny Dogfish	one or more ACE stocks.	Year-round	521	Handgear	Yes.*

*Overlap with a proposed exempted fishery.
†Exempted fisheries have been demonstrated to catch less than 5 percent bycatch of regulated NE multispecies and not jeopardize fishing morality objectives.

Many of these proposals to continue fishing after the sector catches one or more ACEs have some geographical and temporal overlap with existing, or proposed, large-mesh exempted fisheries, including: The SNE Monkfish and Skate Exemption Area for both trawl and gillnet vessels; the Mid-Atlantic Exemption Area; the GOM/GB Dogfish Exemption Area for gillnet vessels; and a proposed GB Dogfish Exemption for gillnet, longline, and handgear vessels (77 FR 64305; October 19, 2012). These exempted fisheries were, or are in the process of being, established because the incidental catch of regulated NE multispecies stocks has been demonstrated to be less than 5 percent of all catch, and the exempted fishery will not jeopardize fishing mortality objectives. A vessel participating in an exempted fishery declares out of the NE multispecies fishery and therefore may not retain any regulated NE multispecies caught. Any sector vessel may currently fish in these large-mesh exempted fisheries, as well as small-mesh exempted fisheries, outside of the sector program without requiring ACE. Descriptions and additional information on approved exempted fisheries are available on our Web site at: *http://www.nero.noaa.gov/nero/regs/info.html.*

We reviewed both vessel trip report (VTR) and observer/ASM data from FYs 2010 and 2011 for the requests to fish without ACE. This data indicate that very few sector trips from FYs 2010 and 2011 met the standard of zero catch of the limiting stock outlined in the guidance we issued to sectors. However, the data for several of the requests indicate that the limiting stock was less than 1 percent of the total catch. The requests meeting the less than 1-percent threshold are summarized below and are proposed for approval.

TABLE 5—REQUESTS TO FISH WITHOUT ACE PROPOSED FOR APPROVAL

Sector	Limiting stock	Stat area	Gear	Target stock	Time period
GB Cod Fixed Gear Sector	All ACE Stocks	526	Extra Large Mesh Gillnet	Monkfish Dogfish Winter Skate	Year Round.
		537	Extra Large Mesh Gillnet	Monkfish	May–March.
				Winter Skate	Year Round.
			Large Mesh Gillnet	Winter Skate	Year Round.
NEFS 5	GB West Cod	611	Standard Otter Trawl	Summer Flounder	Oct–April.
		613		Summer Flounder Monkfish	

Unlike approved exemptions, which may be granted to any interested sector, these provisions to fish without ACE are sector-specific. Should any of these provisions be approved, it would be based on the documented behavior of individual sectors; therefore, the approval would be limited to the requesting sector.

For this provision, NEFS 5 proposed to require its participating vessels to submit trip start and trip end hails to the sector manager. If an NEFS 5 vessel encountered a limiting stock, the sector proposed requiring the vessel to land any amount of that limiting stock of legal size, and prevent that vessel from taking a subsequent fishing trip until that specific ACE is covered through a transfer. Under this proposal, the NEFS 5 may charge the member additional fees for encountering the limiting stock. The GB Cod Fixed Gear sector did not propose such provisions. To implement a consistent program for both sectors, we are proposing the following requirements for a vessel participating in an approved program to fish without ACE.

To aid in identifying these trips, a vessel intending to utilize this exemption on a sector trip would be required to submit a trip start hail identifying the trip as one that will fish in an approved program to fish with no ACE for a given stock. These hail reports would help us, as well as the sector manager, identify a trip fishing under this provision for monitoring purposes. Either sector may also require its participating vessels to submit a trip end hail, as detailed in the operations plan.

We also propose to allow these sectors to catch a *de minimis* amount of the limiting stock (up to100 lb (45.36 kg)), prior to canceling a sector's ability to utilize that approved program. The sector would be required to account for any amount of the limiting stock that is landed and therefore would need to transfer in additional ACE by the end of the FY to cover such an overage. Once a sector reaches the *de minimis* threshold of 100 lb (45.36 kg), the sector may transfer in additional ACE and resume normal fishing activity, but may not attempt to fish under this provision for the remainder of this FY.

We propose to require 100-percent ASM coverage of trips wishing to fish under this provision. We have significant concern with approving a provision to allow a sector to fish without ACE, and believe that 100-percent ASM coverage would be necessary for accurate monitoring, given the very low 2013 quotas for some of the stocks. Because all sector trips that currently are not assigned an observer or monitor receive a calculated discard rate based on the total catch from that trip and actual discards from monitored trips in the same area with the same gear, we cannot apply a calculated discard rate for the limiting stock or the sector could automatically exceed its ACE for the limiting stock on every trip. Requiring 100-percent monitoring ensures that the trip will have accurate discard information.

As explained above, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We are also concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, this provision may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips fishing with no ACE of a limiting stock are not representative of standard sector trips, we are concerned that including the data from this provision in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are proposing to allow sectors to fish with no ACE of a limiting stock only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this provision if a federally funded observer or at-sea monitor is onboard. Sectors fishing with no ACE of a limiting stock would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent this provision trips. A sector vessel wishing to use this provision would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would require a vessel utilizing this provision to submit trip start hail identifying the trip as one that is fishing with no ACE of a limiting stock.

Third, given the need to have additional at-sea monitors available to

cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of fishing with no ACE of a limiting stock and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this provision during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

We have significant concern with approving a provision to allow a sector to fish without ACE, given the very low 2013 quotas for some NE multispecies stocks. We request comment on these proposed programs to fish with no ACE.

Inshore GOM Restrictions

Several sectors (with the exception of the Northeast Coastal Communities Sector, NEFS 4, Port Clyde Community Groundfish Sector, and the Tri-State Sector) have proposed a provision to limit and more accurately document a vessel's behavior when fishing in what they consider the inshore portion of the GOM Broad Stock Area (BSA), or the area to the west of 70° 15′ W. long. A trip that is carrying an observer or at-sea monitor would remain free to fish without restriction. As proposed under the Inshore GOM Restriction provision, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip in the GOM west of 70° 15′ W. long, the vessel would be prohibited from fishing outside of the GOM BSA. Also, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip outside the GOM BSA, this provision would prohibit a vessel from fishing west of 70° 15′ W. long. in the GOM BSA. The sector's proposal includes a requirement for a vessel to declare whether or not it intends to fish in the inshore GOM area through the trip start hail. We are providing sector managers with the ability to monitor this provision through the Sector Information Management Module (SIMM), a Web site where we currently provide roster, trip, discard, and observer information to sector managers. If approved, final declaration requirements would be outlined in the final rule and included in each vessel's LOA. We propose to allow a sector to use a federally funded NEFOP observer or at-sea monitor on these trips because we do not believe will create bias in coverage or discard estimates, as fishing behavior is not expected to change as a result of this provision, as fishing behavior is not expected to change as a result of this provision.

At-Sea Monitoring Proposals

For FY 2013, each sector is required to develop and fund an ASM program that must be reviewed and approved by NMFS. In the event that a proposed ASM program could not be approved, all sectors were asked to include an option to use the current NMFS-designed ASM program as a back-up. NEFS 4 has not included provisions for an ASM program because the sector operates as a private permit bank and explicitly prohibits fishing. Sustainable Harvest Sectors 1 and 3 have proposed to utilize the ASM program that we developed and used for FYs 2010–2012. We propose this program for the Sustainable Harvest Sectors because we believe the existing program to be consistent with goals and objectives of monitoring, and with regulatory requirements. As requested, the remaining 15 sectors stated that they would use the NMFS-developed ASM program in the event that we did not approve their individual ASM program for FY 2013.

We propose to approve the ASM programs proposed by the GB Cod Fixed Gear Sector, the Northeast Coastal Communities Sector, the Port Clyde Community Groundfish Sector, and the Tri-State Sector. These programs state that they will: Contract with a NMFS-approved ASM provider, meet the specified coverage level, and utilize the PTNS for random selection of monitored trips and notification to providers. In addition, these proposed ASM programs detail protocols for waivers, incident reporting, and safety requirements. We believe that the proposed programs are consistent with goals and objectives of monitoring, and with regulatory requirements.

The NEFS 2–13 (excluding NEFS 4) submitted similar ASM proposals, which included two alternatives. The first alternative included a ''fixed discard rate method,'' where a fixed discard rate would be applied to each stratum (sector, stock, gear combination) throughout the year, and adjusted as necessary based on NEFOP observer coverage, and no ASM coverage would be required. The second proposal is a program that would meet the required coverage levels, as well as vessel call-in requirements and selection protocols through the NMFS pre-trip notification system. We propose to deny the ''fixed discard rate method'' because it is not consistent with the 2009 Peer Review of the discard rate methodology, which recommended continual and retroactive in-season updates to the discard rates for all trips using data from the ASM and NEFOP programs. Further, the 2009 Peer Review recommended revisiting the methodology after at least 3 full years of data are collected. Given that sectors are in the midst of their third year of operations (FY 2012), it is too soon to revisit the methodology. A review of the cumulative discard methodology is planned for the summer/fall of 2013. At that time, we will reconsider other possible methods of determining discards. The ''fixed discard rate method'' did not meet the coverage rate requirements specified in the regulations at § 648.87(b)(1)(v)(B)(*3*)(*ii*). Finally, the ''fixed discard rate method'' did not include a proposed ASM program that addressed the ASM operations requirements at § 648.87(b)(6). Consequently, we propose to deny the ''fixed discard rate method.''

The second alternative mirrors the ASM programs proposed by other sectors, and states that the NEFS 2, 3, and 5–13 will: Contract with a NMFS-approved ASM provider, meet the specified coverage level, and utilize the PTNS for random selection of monitored trips and notification to providers. In addition, these proposed ASM programs detail protocols for waivers, incident reporting, and safety requirements. We therefore propose to approve Alternative 2 for ASM for NEFS 2, 3, and 5–13 and believe the proposed Alternative is consistent with goals and objectives of monitoring and with regulatory requirements.

The current regulations require a sector to fund its ASM program beginning in FY 2013. We hope to be able to help the industry's transition to entirely funding its ASM costs through a short-term program that mitigates the industry's costs in FY 2013. However, the portion of industry's ASM costs that

we can defray, and a mechanism for this transitional program, are not yet settled. Additional information on funding and implementation of ASM for FY 2013 will be provided at a future date. We are working on a solution to help with this transition that will be flexible and help defray the industry's costs to the extent we are able.

Additional Industry-Funded ASM

This rule proposes several exemptions requiring observer or ASM coverage. Additional monitoring coverage for these exemptions and provisions was not included in any FY 2013 operations plan; however, additional coverage could be considered, if a sector requests an industry-funded ASM program through its operations plans. If approved, any additional industry-funded ASM plan would be implemented through an amendment to the sector's operations plan.

For 2013, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trip using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips utilizing these exemptions/provisions are not representative of standard sector trips, we are concerned that including the data from these exemptions/provisions in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are proposing to allow sectors to use the exemptions/provisions only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption/provision if a federally funded observer or at-sea monitor is onboard. Sectors using this exemption/provision would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption/provision trips. A sector vessel wishing to use this exemption/provision would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that use the exemption/provision.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that 100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of this exemption/provision and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this exemption/provision during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

Approved ASM and DSM Providers

We published a notice (78 FR 10136) on February 13, 2013, announcing approved providers for ASM and DSM in the NE multispecies fishery for FY 2013, which included incorrect approval information. Table 6 correctly indicates the companies approved to provide ASM and DSM. A bulletin dated February 12, 2013, was provided to the industry with the correct information.

TABLE 6—APPROVED MONITORING PROVIDERS

Provider name	At-sea monitoring	Dockside monitoring	Address	Phone	Fax	Web site
A.I.S., Inc	X	X	89 North Water Street, New Bedford, MA 02747.	(508) 990–9054	(508) 990–9055	*www.aisobservers.com*
MRAG Americas.	X	X	65 Eastern Ave., Unit B2C, Essex, MA 01929.	(978) 768–3880	(978) 768–3878	*www.mragamericas.com*
Atlantic Catch Data, Ltd.	X	X	99 Wyse Road, Suite 815, Dartmouth, Nova Scotia, CANADA B3A 4S5.	(902) 422–4745	(902) 422–9780	*www.atlanticcatchdata.ca*

TABLE 6—APPROVED MONITORING PROVIDERS—Continued

Provider name	At-sea monitoring	Dockside monitoring	Address	Phone	Fax	Web site
East West Technical Services, LLC.	X	.....	34 Batterson Drive, New Britain, CT 06053.	(860) 223–5165	(860) 223–6005	*www.ewts.com*

Withdrawing a Sector Exemption In-Season

Previously, we have retained the right to revoke several exemptions in-season if a sector is not meeting certain requirements. To date, we have not used this authority, but are proposing a process for revoking a sector exemption. A sector exemption may be revoked if we determine that it jeopardizes management measures or rebuilding efforts, results in unforeseen negative impacts on other managed fish stocks, habitat, or protected resources, causes enforcement concerns, or if catch from trips utilizing the exemption cannot properly be monitored. At that time, we will weigh the need to revoke the exemption as quickly as possible to prevent conservation or management objectives from being undermined with the necessity or practicability of, or public interest in, a delay to receive comments.

Sector EA

In order to comply with NEPA, one EA was prepared encompassing all 18 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The EA examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of approving all proposed sector operations plans. The summary findings of the EA conclude that each sector would produce similar effects that have non-significant impacts. Visit *http://www.regulations.gov* to view the EA prepared for the 18 sectors that this rule proposes to approve.

Classification

The Administrative Procedure Act (5 U.S.C. 553) requires advance notice of rulemaking and opportunity for public comment. Due to unexpected changes in stock status, the Council required additional time to determine stock allocations for FY 2013, which delayed our ability to present this to the public. We are providing a 15-day comment period for this rule. A longer comment period would be impracticable and contrary to the public interest since we must publish a final rule prior to the start of FY 2013 on May 1 to enable sectors to fish. A vessel enrolled in a sector may not fish in FY 2013 unless its sectors' operations plan is approved. If the final rule is not published prior to May 1, the permits enrolled in sectors must either stop fishing until their operations plan is approved, or elect to fish in the common pool for the entirety of FY 2013. Both of these options would have negative impacts for the permits enrolled in the sectors. Delaying the implementation beyond May 1, 2013, would result in an unnecessary economic loss to the sector members because vessels would be prevented from fishing in a month when sector vessels landed approximately 10 percent of several allocations, including GB cod east and GB winter flounder. Finally, without a seamless transition between FY 2012 and 2013, a delay would require sector vessels to remove gear that complies with an exemption, and redeploy the gear once the final rule is effective. Taking these additional trips would require additional fuel and staffing when catch may not be landed.

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under Executive Order (E.O.) 12866.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The SBA defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts (gross revenues) of up to $4 million. The Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared, as required by section 603 of the RFA. The Final Regulatory Flexibility Analysis (FRFA) will be prepared after the comment period for this proposed rule, and will be published with the final rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA consists of this section, the **SUMMARY** section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action, and is not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This action will likely affect approximately 303 ownership entities, which represents the number of entities we expect to enroll in sectors that have requested exemptions. A total of 301 ownership entities would be considered a small entity, based on the definition as stated above. The economic impact resulting from this action on these small entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2013. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, FW 44, and FW 45, and upcoming FW 48, and FW 50, which have placed

additional effort restrictions on the NE multispecies fleet.

Description of the Reasons Why Action by Agency Is Being Considered

The flexibility afforded sectors includes exemptions from certain specified regulations as well as the ability to request additional exemptions. Sector members no longer have NE multispecies catch limited by DAS allocations and are instead limited by their available ACE. In this manner, the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE, which places a premium on timing landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Further description of the purpose and need for the proposed action is contained in Section 2.0 of the EA prepared for this action.

Sector measures were intended to provide a mechanism for vessels to pool harvesting resources and consolidate operations in fewer vessels, if desired, and to provide a mechanism for capacity reduction through consolidation. Reasons why fewer vessels fished in FY 2011, in comparison to FY 2010, may be related to owners with multiple vessels fishing fewer vessels. It is also likely that some vessels that have not landed NE multispecies have received revenue from leasing their NE multispecies allocation or have been fishing in other fisheries. Fewer vessels are actively fishing for, and landing, regulated species and ocean pout, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, thus seemingly continuing a trend of consolidation in the fishery. However, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to FYs prior to the expansion of sector management by Amendment 16.

The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to authorize the operations of 18 sectors in FY 2013, and to allow the benefits of sector operations to accrue to permits enrolled in sectors and the New England communities where they dock and land. The legal basis for the proposed action is the NE Multispecies FMP and promulgating regulations at § 648.87.

Estimate of the Number of Small Entities

The SBA size standard for commercial fishing entities (North American Industry Classification System code 114111) is $4 million in annual sales. Section 3 of the Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)). We have recently worked to identify ownership affiliations, and incorporated that data into this analysis; consequently, this analysis may differ from analysis conducted in previous years. Although work to more accurately identify ownership affiliations is ongoing; for the purposes of this analysis, ownership entities are defined as an association of fishing permits held by common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. The maximum number of entities that could be affected by the proposed exemptions is expected to be approximately 303 ownership entities (301 qualifying as small entities)—the number of entities anticipated to enroll in the 18 sectors that have submitted an operations plan for FY 2013. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2013, the number of permits participating in sectors on May 1, 2013, and the resulting sector ACE allocations, are likely to change. Additionally, new permit holders who acquire their permits through an ownership change that occurred after December 1, 2012, may enroll their permit in a sector or change the permit's sector affiliation through April 30, 2013.

Reporting, Recordkeeping and Other Compliance Requirements

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. The proposed action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action would be documented in a LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block would reduce the reporting burden for ownership entities with sector vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

Ownership entities that include any sector vessels receiving an exemption from the gillnet limit (up to 150 nets) would also be exempt from current tagging requirements, and would instead be required to tag gillnets with one tag per net. Compliance with the tagging requirement would not necessarily require ownership entities with sector vessels to purchase additional net tags, as each vessel is already issued up to 150 tags. However, ownership entities with sector vessels that have not previously purchased the maximum number of gillnet tags may find it necessary to purchase additional tags to comply with this requirement at a cost of $1.20 per tag.

The exemption to allow a vessel to haul another vessel's gillnet would require each ownership entity to tag all gear it is authorized to haul. Because of the existing 150-tag limit, no additional tags could be purchased.

The exemption from the limit on the number of hooks does not involve reporting requirements, but may result in increased costs for hooks and rigging (groundline, gangions, anchors) if a ownership entity chooses to increase the amount of gear fished. Circle hooks of the legal minimum size (12/0) cost about $0.19 each without rigging.

The GOM Sink Gillnet exemption does not involve additional reporting requirements. However, to fully utilize this exemption, ownership entities with sector vessels would need to purchase 6-inch (15.2-cm) mesh gillnet nets. At the time this IRFA was prepared, no cost information was available for a 6-inch (15.2-cm) mesh gillnet panel. However, the cost of a 6.5-inch (16.5-cm) mesh 300-ft (91.4-m) gillnet panel, complete with floats and break-away links, is estimated at $310. The quantity of 6-inch (15.2-cm) mesh gillnets purchased by a vessel to participate in this program would depend on the vessel's gillnet designation (a Day gillnet vessel would have a 150-net limit) and the perceived economic benefits of utilizing the exemption, which may be based on market conditions.

In order to utilize the exemption from the minimum trawl mesh size to target redfish, an ownership entity would need to purchase or utilize a codend of small mesh. At the time this IRFA was prepared, no cost information was available for a 4.5-inch (11.43-cm) mesh codend. The purchase of a 4.5-inch (11.43-cm) mesh codend would depend

on a ownership entities perceived economic benefit of utilizing the exemption, which may be based on market conditions.

Exempting sectors from the requirement to submit a daily catch report for all vessels participating in the CA I Hook Gear Haddock SAP will not change the reporting burden of individual participating ownership entities, as vessels would merely change the recipient of their current daily report.

Other exemptions proposed in this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements can be found in the final rules implementing Amendment 16, each approved FY 2012 sector operations plan, and in the draft FY 2013 sector operations plans.

Duplication, Overlap or Conflict With Other Federal Rules

The proposed action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities

The proposed action would create a positive economic impact for the participating ownership entities that include sector vessels because it would mitigate the impacts from restrictive management measures implemented under NE Multispecies FMP. Little quantitative data on the precise economic impacts to individual ownership entities is available. The *2011 Final Report on the Performance of the Northeast Multispecies (NE multispecies) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross nominal revenue per trip and per day absent in 2011 were higher for the average sector vessel than in 2010, and lower for the average common pool vessel than in 2010, except for average revenue per day on a groundfish trip for vessels under 30′ in length and for vessels 75′ and above. However, the report stipulates that this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will have a greater opportunity to remain economically viable while adjusting to changing economic and fishing conditions. Thus, the proposed action provides benefits to sector members that they would not have under the No Action Alternative.

Economic Impacts on Small Entities Resulting From Proposed Action

The EIS for Amendment 16 compares economic impacts of sector vessels with common pool vessels and analyzes costs and benefits of the universal exemptions. The final rule for the approval of the FY 2010 sector operations plans and contracts (75 FR 18113, April 9, 2010) and its accompanying EAs discussed the economic impacts of the exemptions requested by sectors that year. The final rule for the supplemental sector rule (75 FR 80720, December 23, 2010) and its accompanying supplemental EA discussed the impacts of additional exemptions requested by sectors. The final rule for the approval of the FY 2011 sector operations plans and contracts (76 FR 23076, April 25, 2011) and its accompanying EA discussed the economic impacts of the exemptions requested by sectors that year. The final rule for the approval of the FY 2012 sector operations plans and contracts (77 FR 26129, May 2, 2012) and its accompanying EA discussed the economic impacts of the exemptions requested by sectors that year.

The EA prepared for this rule evaluates the impacts of each exemption individually relative to the no-action alternative (i.e., no sectors are approved), and the exemptions may be approved or disapproved individually or as a group. The impacts associated with the implementation of each of the exemptions proposed in this rule are analyzed as if each exemption would be implemented for all sectors; however, each exemption will only be implemented for the sector(s) which requested that exemption.

Increased ''operational flexibility'' generally has positive impacts on human communities as sectors and their associated exemptions grant fishermen some measure of increased operational flexibility. By removing the limitations on vessel effort (amount of gear used, number of days declared out of fishery, trip limits and area closures) sectors help create a more simplified regulatory environment. This simplified regulatory environment grants fishers greater control over how, when, and where they fish, without working under increasingly complex fishing regulations with higher risk of inadvertently violating one of the many regulations. The increased control granted by the sectors and their associated exemptions may also allow fishermen to maximize the ex-vessel price of landings by timing them based on the market. Generally, increased operational flexibility can result in reduced costs and/or increased revenues. All exemptions contained in the proposed FY 2013 sector operations plans are expected to generate positive social and economic effects for sector members and ports. In general, profits can be increased by increasing revenues or decreasing costs. Similarly, profits decrease when revenues decline or costs rise. The following discussion concentrates on cost and revenues in order to focus on the mechanism by which profits are expected to change due to the exemptions granted by this action.

Exemption From the Day Gillnet 120-Day Block Out of the Fishery

Existing regulations require that vessels using gillnet gear remove all gillnet gear from the water for 120 days per year. Under an output-control management system, this type of input control is unnecessary. Many affected ownership entities have purchased additional vessels in order to be able to fish continuously. The exemption from the 120-day block allows sector members to reduce costs by retiring the redundant vessel. Furthermore, this exemption may allow ownership entities with sector vessels to take advantage of other exemptions, such as the exemption from the GB Seasonal Closure in May and portions of the GOM Rolling Closure Areas.

Exemption From the 20-Day Spawning Block Out of the Fishery

Exemption from the 20-day spawning block would improve operational flexibility by allowing participants to match trip planning decisions to environmental and economic conditions. The increased operational flexibility may result in higher revenues (improved timing of delivery to market) or lower costs for participating ownership entities.

Exemption From the Prohibition on a Vessel Hauling Another Vessels' Gillnet Gear

This community fixed-gear exemption would allow sector vessels in the Day gillnet category to share gillnet gear. This exemption would reduce the total

amount of gear that would have to be purchased, maintained, and tended by ownership entities participating in sectors, resulting in lower costs and possibly lower amount of gear fished.

Exemption From the Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a NE Multispecies/Monkfish DAS

This exemption would increase operational flexibility by allowing a sector vessel to haul its monkfish gillnets and NE multispecies gillnets on the same trip. This exemption may reduce costs for those ownership entities participating in a sector.

Exemption From the Limitation on the Number of Hooks That May Be Fished

This exemption would increase operational flexibility by allowing operators to adapt to environmental and economic conditions. This exemption may result in higher revenues or reduced costs.

Exemption From DAS Leasing Program Length and Horsepower Restrictions

This exemption would increase operational flexibility by allowing participating sector members to deploy fishing gear according to operational and market needs. The increased operational flexibility is likely to result in either higher revenues or lower costs for participating ownership entities. Because DAS are no longer required while fishing for NE multispecies, ownership entities with vessels participating in other fisheries (e.g., monkfish) which require the use of DAS are likely to be positively impacted by this exemption.

Exemption From Prohibition of Discarding Legal-Size Allocated Species

Sector vessels are required to retain legal-size unmarketable fish, which must be stored on the vessel while at sea. This requirement may create unsafe work conditions and reduce safety at sea. In addition, sector vessels must determine a method of disposal for landed unmarketable fish. An exemption from this regulation would allow sector vessels to discard unmarketable fish, thereby enabling ownership entities that include sector vessels to increase flexibility, improve safety conditions at sea, and reduce costs associated with disposing of the landed unmarketable fish.

Exemption From the Requirement That the Sector Manager Submit Daily Catch Reports for the CA I Hook Gear Haddock SAP

Eliminating the daily catch reporting by sector managers would reduce the administrative burden on the sector managers. The reporting burden of individual participating vessels remains unchanged. In addition to reducing administrative burden, this exemption may result in slightly lower operating costs for sectors.

Exemption From the Requirement To Power a VMS While at the Dock

Maintaining a VMS signal while at the dock, or tied to a mooring, requires constant power be delivered to the vessel or constant use of onboard generators. This exemption will reduce the operating costs for fishing operations and would result in some improved profitability.

Exemption From DSM Requirements for Handgear A-Permitted Sector Vessels, Vessels Fishing West of 72°30′ W. Long., and Vessels on Monkfish DAS When Using 10-Inch (25.4-cm) or Greater Mesh in the Monkfish SFMA

FW 45 revised DSM requirements and stipulated that sectors must comply with any DSM program specified by NMFS in FY 2013. This exemption would reduce the regulatory cost and burden of any DSM coverage level above zero. The vessels qualifying for these exemptions generally are the smallest operations, or have the smallest amount of NE multispecies catch, and so would otherwise be disproportionately burdened compared to larger operations.

Exemption From the Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip

FW 40A established the CA I Hook Gear Haddock SAP. Multispecies vessels fishing on a trip within this SAP are prohibited from deploying fishing gear outside of the SAP on the same trip when they are declared into the SAP. This exemption would increase operational flexibility by allowing sector vessels to fish both inside and outside the SAP on the same trip. This exemption would reduce costs to ownership entities by reducing the amount of travel time to haul gear in the SAP and in other areas.

Exemption From the 6.5-Inch (16.5-Cm) Minimum Mesh Size Requirement for Trawl Nets

This exemption would allow sector vessels to use codends below the minimum mesh size to target redfish. To take advantage of this exemption, participating ownership entities would need to purchase a net below the 6.5-inch (16.5-cm) minimum size; however, this gear change would be voluntary and the gear would be adopted only if the ownership entities anticipated positive returns from the switch. The exemption could increase the operational flexibility of ownership entities with sector vessels and could increase revenues of sector fishermen if they are able to increase the catch rate of redfish.

Exemption From the Prohibition on a Vessel Hauling Another Vessel's Hook Gear

This exemption would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in lower costs and a possible reduction in total gear fished.

Exemption From the Requirement To Declare Intent To Fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP Prior to Leaving the Dock

Multispecies vessels are currently required to declare that they will be fishing in the Eastern U.S./CA Haddock SAP or the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. The requested exemption would reduce the administrative burden of declaring intent to fish and increase operational flexibility by allowing the vessel to make trip planning decisions while at-sea. This exemption could reduce costs to ownership entities by reducing the amount of travel time for vessels to fish in the SAP without first returning to port.

Exemption From the Limit on the Number of Nets for Day Gillnet Vessels

This exemption would increase operational flexibility by allowing participating sector members to deploy fishing gear according to operational and market needs. The increased flexibility is likely to result in higher revenues or lower costs for participating ownership entities.

GOM Sink Gillnet Exemption (May, and January Through April)

This exemption would allow sector members to use 6-inch (15.2-cm) mesh gillnets in the GOM RMA in May, 2013 and from January 1, 2014, through April 30, 2014. This exemption will allow participating ownership entities with sector vessels to retain more GOM haddock and increase revenues. To take advantage of this exemption, participating ownership entities would need to purchase 6-inch (15.2-cm) mesh gillnets; however, this gear change would be voluntary and the gear would be adopted only if the ownership entities anticipated positive returns from the switch. In FY 2011, 82.7 percent of the available GOM haddock ACE was not caught.

Exemption From the Trawl Gear Requirements in the U.S./Canada Management Area

This exemption would allow the use of any NE multispecies trawl gear, rather than approved conservation gears, provided the gear conforms to regulatory requirements for using trawl gear to fish for NE multispecies in the GB RMA. This exemption would result in greater operational flexibility to participating ownership entities with sector vessels. This increased operational flexibility may translate into lower costs if ownership entities can reduce the amount of gear, effort or type of gear necessary to catch NE multispecies in the U.S./Canada Management Area.

Exemption From Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP was implemented by FW 40A in 2004 to provide an opportunity to target haddock. In 2006, FW 42 shortened the season of this SAP to August 1 through December 31 to reduce cod catch. For ownership entities that include sector vessels, the SAP provides access to the northern tip of CA II, which may increase haddock catch and revenue for fishermen.

Exemption From Seasonal Restriction for the CA II Yellowtail Flounder/ Haddock SAP

The CA II Yellowtail Flounder/ Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II. In 2005, FW 40B shortened the season of this SAP to July 1 through December 31 to reduce interference with spawning yellowtail flounder. Amendment 16 further revised this SAP to allow participating vessels to target haddock from August 1 through January 31. This exemption would increase a sector's operational flexibility and efficiency by allowing the opportunity to fish year-round in the SAP area. It could allow for a greater catch of haddock and increased revenues for fishermen.

Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder Onboard

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder (§ 648.85(b)(6)(v)(F)). However, a vessel may fish for other species in the SNE/MA winter flounder stock area but can only transit the SNE/MA winter flounder stock area with GOM or GB winter flounder on board the vessel. This exemption would allow a vessel to fish in the SNE/MA winter flounder stock area after retaining GOM or GB winter flounder, when an observer is on board. By increasing operational flexibility this exemption would likely increase the expected profits of sector fishermen.

Prohibition on Combining Small-Mesh Exempted Fishery and Sector Trips

Exempted fisheries allow a vessel to fish for specific species, such as whiting or northern shrimp, in designated areas using mesh sizes smaller than the minimum mesh size allowed in each regulated mesh area. This exemption would increase a sector's operational flexibility and efficiency by allowing the opportunity to combine a sector trip with a trip into an exempted fishery. It could allow for a greater catch of both allocated and non-allocated stocks and increased revenues for fishermen.

Sampling Exemption

This exemption would allow sector vessels to temporarily retain NE multispecies below the minimum size to collect scientific information. This exemption is largely administrative, but the findings from this research could ultimately contribute to stock assessment or other fisheries science and could be used to improve the health and productivity of fish stocks.

Exemption From DSM Requirements for Jig Vessels

FW 45 revised DSM requirements and stipulated that sectors must comply with any DSM program specified by NMFS in FY 2013. This exemption would reduce the regulatory cost and burden of any DSM coverage level above zero. The ownership entities with vessels qualifying for these exemptions generally are the smallest operations, or have the smallest amount of NE multispecies catch, and so would otherwise be disproportionately burdened compared to larger operations.

Other Significant Alternatives

Amendment 16 allowed each sector to submit an operations plan, including specific exemption requests and other fishing provisions. The purpose and need of this action is to facilitate the implementation of the FY 2013 sector operations plans and associated exemptions. Therefore, we can only propose to approve, partially approve, or deny what the sectors have proposed.

There were several exemptions requested by the sectors for FY 2013 that the regulations implemented by Amendment 16 prohibited NMFS from considering. NMFS also received requests for exemptions that NMFS previously disapproved in FYs 2010, 2011 or 2012; however, no new data or information has become available that would convince NMFS to reconsider the previously disapproved exemptions further in FY 2013.

Some sectors proposed additional provisions as part is its operations plans. Like the exemptions highlighted above, these provisions may provide additional operational flexibility and may generate positive social and economic effects for sector members and ports. The following discussion concentrates on cost and revenues in order to focus on the mechanism by which profits are expected to change due to the provisions approved by this action.

Fishing With No ACE

Two sectors have requested approval to continue fishing operations despite having used its entire ACE for at least one allocated stock. This provision would provide the two requesting sectors with additional operational flexibility and could potential land a greater proportion of their ACE and other non-target stocks, such as monkfish, dogfish, and skates.

Inshore GOM Declaration

Most sectors have also included a provision to limit and more accurately document a vessel's behavior when fishing in the GOM Broad Stock Area (BSA). A sectors usage of this provision is voluntary, and is not expected to substantially change fishing behavior. Usage of this provision is expected to have negligible effects on most ownership entities; however, there is the potential for a decrease in flexibility for some vessels that would fish on Georges Bank and then the Gulf of Maine on the same trip. However, the analysis indicates that this would affect very few ownership entities.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

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

Dated: March 11, 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. 2013–05976 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 50
Thursday, March 14, 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

Food Safety and Inspection Service

[Docket No. FSIS–2013–0012]

Codex Alimentarius Commission: Codex Committee on Pesticide Residues (CCPR)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the U.S. Environmental Protection Agency (EPA) are sponsoring a public meeting on March 28, 2013. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 45th Session of the Codex Committee on Pesticide Residues (CCPR) of the Codex Alimentarius Commission (Codex), which take place in Beijing, People's Republic of China, May 6–13, 2013. The Under Secretary for Food Safety and the Environmental Protection Agency recognize the importance of providing interested parties the opportunity to obtain background information on the 45th session of CCPR and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, March 28, 2013 from 1:00–4:00 p.m.

ADDRESSES: The public meeting will take place at Environmental Protection Agency, Room S–7100, One Potomac Yard South; 2777 South Crystal Drive, Arlington, VA, 22202. Documents related to the 45th Session of CCPR will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/,*

Lois Rossi, U.S. Delegate to the 45th session of the CCPR, the Environmental Protection Agency and the U.S. Department of Agriculture invite interested parties to submit their comments electronically to the following email address: *Rossi.Lois@epa.gov.*

Call In Number:

If you wish to participate in the public meeting for the 45th session of the CCPR by conference call, please use the call in numbers and participant codes listed below:

United States Call in Number: 1–866–299–3188.

International Call in Number: 1–706–758–1822.

Participant Code: 7033056463.

For Further Information About the 45th Session of the CCPR Contact: Lois Rossi, Director, Registration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Tel: (703) 305–5447, Fax: (703) 305–6920; Email: *Rossi.Lois@epa.gov.*

For Further Information About the Public Meeting Contact: Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Tel: (202) 205–7760, Fax: (202) 720–3157, Email: *Doreen.Chen-Moulec@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Codex Committee on Pesticide Residues is responsible for establishing maximum limits for pesticide residues in specific food items or in groups of food; establishing maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health; preparing priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR); considering methods of sampling and analysis for the determination of pesticide residues in food and feed; considering other matters in relation to the safety of food and feed containing pesticide residues; and establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides, in specific food items or groups of food.

The Committee is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 45th Session of CCPR will be discussed during the public meeting:

- Matters referred to the committee by the Codex Alimentarius Commission and other subsidiary bodies
- Matters of interest arising from FAO and WHO
- Matters of interest arising from other international organizations
- Report on items of general consideration by the 2012 Joint FAO/WHO Meeting on Pesticide Residues (JMPR)
- Report on 2012 JMPR responses to specific concerns raised by CCPR
- Draft and proposed draft maximum residue limits (MRLs) for Pesticides in Food and Feed at Steps 7 and 4
- Discussion paper on principles and guidance for the use of the concept of proportionality to estimate maximum residue limits for pesticides
- Discussion paper on the review of the commodity groups in the database for maximum residue limits for pesticides to determine the need for revision of relevant group MRLs (revised fruit commodity groups of the Classification of Foods and Animal Feeds)
- Draft revision of the Classification of Food and Animal Feeds at Step 7: *Selected vegetable commodity groups*
- Proposed draft revision of the Classification of Foods and Animal Feeds at Step 4: *Other selected commodity groups*
- Proposed draft Table 2—Examples of selection of representative commodities for selected vegetable commodity groups (Item 7a) and other selected commodity groups (Item 7b) (for inclusion in the Principles and Guidance for the Selection of Representative Commodities for the

Extrapolation of Maximum Residue Limits for Pesticides to Commodity Groups) at Step 4
- Discussion Paper on guidance to facilitate the establishment of MRLs for pesticides for minor crops and specialty crops
- Discussion paper on performance criteria for suitability assessment of methods of analysis for pesticide residues
- Revision of the Risk Analysis Principles applied by the Codex Committee on Pesticide Residues
- Establishment of Codex Priority Lists of Pesticides
- Other Business and Future work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the March 28, 2013, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Lois Rossi, U.S. Delegate for the 45th session of the CCPR (see **ADDRESSES**). Written comments should state that they relate to activities of the 45th session of the CCPR.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on: March 8, 2013.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2013–05840 Filed 3–13–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The Panel is meeting as authorized under the Community Forest Restoration Act (Title VI, Pub. L. 106–393) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which applications submitted in response to the Collaborative Forest Restoration Program Request For Applications best meet the program objectives.

DATES: The meeting will be held April 22–26, 2013, beginning at 10:00 a.m. on Monday, April 22 and ending at approximately 4:00 p.m. on Friday, April 26.

ADDRESSES: The meeting will be held at the Hyatt Place Albuquerque/Uptown, 6901 Arvada Avenue NE., Albuquerque, NM 87110, (505) 872–9000. Written comments should be sent to Walter Dunn, Cooperative and International Forestry, USDA Forest Service, 333 Broadway SE., Albuquerque, NM 87102. Comments may also be sent via email to *wdunn@fs.fed.us,* or via facsimile to Walter Dunn at (505) 842–3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE., Albuquerque.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Assistant Designated Federal Official, (505) 842–3425, Cooperative and International Forestry, USDA Forest Service, 333 Broadway SE., Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Panel discussion is limited to Panel members and Forest Service staff. Project proponents may respond to questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant application review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

Dated: January 14, 2013.

Gilbert Zepeda,

Deputy Regional Forester.

[FR Doc. 2013–05931 Filed 3–13–13; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of business meeting and briefing.

DATE AND TIME: Friday, March 22, 2013; 9:00 a.m. EST.

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

MEETING AGENDA —9:00 a.m.

I. Approval of Agenda

II. Consideration of Public Release of the transcript for the August 2012 Immigration Briefing

III. Adjourn Meeting

BRIEFING AGENDA —9:30 a.m.–12:30 p.m.

This briefing is open to the public.

Topic: *Reconciling Non-Discrimination Principles with Civil Liberties*

I. Introductory Remarks by Chairman

II. Panel I—9:30 a.m.–10:50 a.m.:

Scholars involved in the *Hosanna-*

Tabor v. EEOC, 132 S.Ct. 694 (2012) or *Christian Legal Society v. Martinez* 130 S.Ct. 2971 (2010) Litigation—Speakers' Remarks and Questions from Commissioners

III. Panel II—11:00 a.m.–12:30 p.m.: Experts will discuss the broader conflict between anti-discrimination norms and civil liberties—Speakers' Remarks and Questions from Commissioners

IV. Adjourn Briefing

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: March 11, 2013.

TinaLouise Martin,

Director of Management/Human Resources.

[FR Doc. 2013–05965 Filed 3–12–13; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from Panama.

OMB Control Number: None.

Form Number(s): N/A.

Type of Request: Regular submission (new information collection).

Burden Hours: 24.

Number of Respondents: 6 (1 for Request; 5 for Comments).

Average Hours per Response: 4 hours for a Request; and 4 hours for each Comment.

Needs and Uses: Title III, Subtitle B, Section 321 through Section 328 of the United States-Panama Trade Promotion Agreement Implementation Act (the Act) [Pub. L. 112–43] implements the textile and apparel safeguard provisions, provided for in Article 3.24 of the United States-Panama Trade Promotion Agreement (the Agreement). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, a Panamanian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.24 permits the United States to increase duties on the imported article from Panama to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under Section 322(a) of the Act, and for providing relief under Section 322(b) of the Act.

In Proclamation No. 8894 (77 FR 66507, November 5, 2012), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Panama, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry subject to Section 322(b) of the Act.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: March 11, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05869 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Panama Trade Promotion Agreement.

OMB Control Number: None.

Form Number(s): N/A.

Type of Request: Regular submission (new information collection).

Burden Hours: 89.

Number of Respondents: 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).

Average Hours per Response: Request, 8 hours; Response, 2 hours; and Rebuttal, 1 hour.

Needs and Uses: Title II, Section 203(o) of the United States-Panama Trade Promotion Agreement Implementation Act (the Act) [Pub. L. 112–43] implements the commercial availability provision provided for in Article 3.25 of the United States-Panama Trade Promotion Agreement (the Agreement). The Agreement entered into force on October 31, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Panama or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3.25 of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Panama or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Panama or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial

availability provision in Chapter 3, Article 3.25, Paragraphs 4–6 of the Agreement. Under this provision, interested entities from Panama or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3.25 of the Agreement.

Chapter 3, Article 3.25, paragraph 6 of the Agreement requires that the President ''promptly'' publish procedures for parties to exercise the right to make these requests. Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Panama as set out in Annex 3.25 of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (CITA), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (See Proclamation No. 8894, 77 FR 66507, November 5, 2012).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Panamanian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Panama, subject to Section 203(o) of the Act.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: March 11, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05868 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: BIS Program Evaluation.

OMB Control Number: 0694–0125.

Form Number(s): N/A.

Type of Request: Regular submission (extension of currently approved information collection).

Burden Hours: 500.

Number of Respondents: 3,000.

Average Hours per Response: 10 minutes.

Needs and Uses: This collection of information is necessary to obtain feedback from seminar participants. This information helps BIS determine the effectiveness of its programs and identifies areas for improvement. The gathering of performance measures on the BIS seminar program is also essential in meeting the agency's responsibilities under the Government Performance and Results Act (GPRA).

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, via fax to (202) 395–5167 or the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: March 11, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05870 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1885]

Reorganization of Foreign-Trade Zone 72 (Expansion of Service Area) Under Alternative Site Framework; Indianapolis, Indiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, submitted an application to the Board (FTZ Docket B–71–2012, docketed 9/19/2012) for authority to expand the service area of the zone to include Union and Vermillion Counties, as described in the application, adjacent to the Indianapolis, Indiana Customs and Border Protection ports of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 59373–69374, 9/27/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 72 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 5th day of March 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–05789 Filed 3–13–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–86–2012]

Foreign-Trade Zone 38—Spartanburg County, South Carolina; Authorization of Production Activity; ZF Transmissions Gray Court, LLC (Automatic Transmissions); Gray Court, South Carolina

On November 8, 2012, the South Carolina State Ports Authority, grantee of FTZ 38, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of ZF Transmissions Gray Court, LLC, within FTZ 38—Site 20, in Gray Court, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 70992–70993, 11–28–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: March 8, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–05924 Filed 3–13–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1889]

Approval for Export-Only Manufacturing Authority, Foreign-Trade Zone 203, SGL Automotive Carbon Fibers, LLC, (Carbon Fiber Manufacturing), Moses Lake, Washington

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the, grantee of Foreign-Trade Zone 203, has requested export-only manufacturing authority on behalf of SGL Automotive Carbon Fibers, LLC, within FTZ 203-Site 3, in Moses Lake, Washington (FTZ Docket 4–2011, filed January 4, 2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 1599, 1/11/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for export-only manufacturing authority under zone procedures within FTZ 203-Site 3, on behalf of SGL Automotive Carbon Fibers, LLC, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 5th day of March 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–05788 Filed 3–13–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Duty Administrative Review; 2010 to 2011

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 6, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea).[1] This review covers seven manufacturers and/or exporters (collectively, the respondents) of the subject merchandise: Dongbu Steel Co., Ltd. (Dongbu), Dongkuk Industries Co., Ltd. (Dongkuk), Haewon MSC Co. Ltd. (Haewon), Hyundai HYSCO (HYSCO), LG Chem., Ltd. (LG Chem), LG Hausys, Ltd. (Hausys), and Union Steel Manufacturing Co., Ltd. (Union). The period of review (POR) is August 1, 2010, through July 31, 2011. Based on our analysis of the comments received, we have made certain changes in the margin calculation for Dongbu and HYSCO. The final results, consequently, differ from the *Preliminary Results.* The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* March 14, 2013.

FOR FURTHER INFORMATION CONTACT: Cindy Robinsons or Christopher Hargett, at (202) 482–3797 or (202) 482–4161, respectively; AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 2012, the Department published the *Preliminary Results.* In the *Preliminary Results,* the Department did not address the targeted dumping allegation submitted by the petitioner, United States Steel Corporation (U.S. Steel), on May 8, 2012, and May 24, 2012.[2] We invited

[1] *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of the 18th Antidumping Duty Administrative Review, and Partial Rescission,* 77 FR 54891 (September 6, 2012) (*Preliminary Results*).

[2] *See id.,* 77 FR at 54893.

interested parties to comment on the *Preliminary Results*.[3] On October 26, 2012, Dongbu, Hausys, Union, and U.S. Steel submitted case briefs on the Department's *Preliminary Results*.[4] On November 6, 2012, Dongbu, HYSCO and U.S. Steel submitted rebuttal briefs on the Department's *Preliminary Results*.[5]

On December 26, 2012, the Department issued a Post-Preliminary Analysis.[6] At that time, we invited parties to comment on the Department's analysis in addressing the petitioner's targeted dumping allegation in this review.[7] On January 7, 2013, HYSCO, Dongbu, domestic producer Nucor Corporation (Nucor), and U.S. Steel submitted comments on the Department's Post-Preliminary Analysis.[8] On January 17, 2013, HYSCO, Nucor and U.S. Steel submitted rebuttal comments to the Department's Post-Preliminary Analysis.[9]

Period of Review

The POR covered by this review is August 1, 2010, through July 31, 2011.

Scope of the Order

The order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.,* products which have been ''worked after rolling''). Excluded from the order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from the order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties, as well as the comments and rebuttal comments related to the Department's Post-Preliminary Analysis, to this proceeding and to which we have responded are listed in Appendix I to this notice and are addressed in the Issues and Decision Memorandum, dated concurrently with, and hereby adopted by, this notice.[10] The Issues and Decision Memorandum is a public document and is available electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaacess.trade.gov* and is available to all parties in the Central Records Unit, located in room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes From the Preliminary Results and Post-Preliminary Results

Based on our analysis of the comments received from interested parties, we have made the following three changes in calculating Dongbu's weighted-average dumping margin for the final results: (1) We have corrected the allegedly targeted customer code which was inadvertently miscoded in the Post-Preliminary Analysis' Margin Program, and the correct customer code is inputted in the final Margin Program; (2) we have modified the beginning and ending dates, as well as the window period dates, in both the comparison market and margin programs to ensure that all entries in the United States, and the appropriate sales in the home market, are taken into consideration for calculating the final margin; (3) we have used GRSUPR1H as the comparison market gross price variable in the Department's Comparison Market Program for the final results.[11]

We have also allocated HYSCO's reported home market warranty expenses over all sales.[12]

---

[3] *See id.,* 77 FR at 54896.

[4] *See* Dongbu's, Hausys,' Union's and U.S. Steel's comments on the Department's *Preliminary Results,* all dated October 26, 2012.

[5] *See* Dongbu's, HYSCO's and U.S. Steel's rebuttal comments on the Department's *Preliminary Results,* all dated November 6, 2012.

[6] *See* the Department's ''2010/2011 Review of the Antidumping Duty Orders on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Post-Preliminary Analysis Memorandum,'' dated December 26, 2012 (''Post-Preliminary Analysis'').

[7] *See* Post-Preliminary Analysis at 4 and 5.

[8] *See* HYSCO's, Dongbu's, Nucor's and U.S. Steel's comments on the Department's Post-Preliminary Analysis, all dated January 7, 2013.

[9] *See* HYSCO's, Nucor's and U.S. Steel's rebuttal comments on the Department's Post-Preliminary Analysis, all dated January 17, 2013.

[10] *See* Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Issues and Decision Memorandum for the Final Results,'' (Issues and Decision Memorandum) dated concurrently with this notice.

[11] *See* Issues and Decision Memorandum at Comments 3, 5, and 6. For further details on how the changes were applied in the margin calculation, *see* Memorandum to the File, from Cindy Robinson, Sr. International Trade Analyst, through Eric Greynolds, Program Manager, entitled ''Calculation Memorandum for Dongbu Steel'' dated March 7, 2013.

[12] *See* Issues and Decision Memorandum at Comment 8; Memorandum to the File, from Christopher Hargett, Sr. International Trade Analyst, through Eric Greynolds, Program Manager, ''Final Results in the 18th Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Hyundai HYSCO'' dated March 7, 2013.

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margins exist for the period August 1, 2010, through July 31, 2011:

Manufacturer/Exporter	Weighted-average dumping margin (percent)
Dongbu	1.26
HYSCO	0.00
Review-Specific Average Rate Applicable to Non-Examined Respondents: [13] Dongkuk, Haewon, Hausys, LG Chem, and Union	1.26

Disclosure

We will disclose calculation memoranda used in our analysis to parties to these proceedings within five days of the date of publication of this notice.[14]

Assessment

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For assessment purposes, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012). For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.5 percent), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We calculated such rates based on the ratio of the total amount of dumping calculated for the examined sales to each importer, to the total entered value of these same sales for which entered value was reported. If an importer-specific assessment rate is zero or below *de minimis,*[15] or exporter has a weighted-average dumping margin that is zero or below *de minimis,* the Department will instruct CBP to assess that importer's entries of subject merchandise without regard to antidumping duties.

For respondents who were not individually examined, the *ad valorem* assessment rate for their associated entries will be equal to the weighted-average dumping margin included in the

Final Results of Review

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[16] This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the country-specific all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of subject merchandise entered or withdrawn from warehouse, for consumption, on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies subject to this review, the cash deposit rate will be equal to the respective weighted-average dumping margin established in the final results of this review, as listed above; (2) for previously reviewed or investigated companies not listed above that have their own rates, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous completed segment conducted under this proceeding by the Department, the cash deposit rate will be 17.70 percent, the all-others rate, established in the LTFV investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely

[13] This rate is a weighted-average percentage margin (based on the reviewed company with an affirmative dumping margin) for the period August 1, 2009, through July 31, 2010, and does not include zero and *de minimis* rates or any rates based solely upon facts available.

[14] *See* 19 CFR 351.224(b).

[15] *See* 19 CFR 351.106(c)(2).

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 58 FR 44159 (August 19, 1993).

written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 7, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Issues in Issues and Decision Memorandum

List of Comments

General Issues

Comment 1: Targeted Dumping

A. Application of Alternative Methodology and Targeted Dumping
B. Withdrawal of Targeted Dumping Regulation
C. Department's Targeted Dumping Analysis
D. Application of the *Nails* Test
E. Application of Zeroing

Company Specific Issues

I. DONGBU

Comment 2: Post-preliminary Analysis Regarding Targeted Time Period
Comment 3: Targeted Customer Code
Comment 4: Exempted Harbor Usage Fees
Comment 5: Date of Sale
Comment 6: Comparison Market Gross Unit Price Variable

II. HYSCO

Comment 7: Date of Sale
Comment 8: Warranty Expenses
Comment 9: Reclassification of Merchandise
Comment 10: Classification of Non-Temper Merchandise

III. UNION

Comment 11: Individual Review

[FR Doc. 2013–05934 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–987]

Hardwood and Decorative Plywood From the People's Republic of China: Amended Preliminary Countervailing Duty Determination; and Alignment of Final Determination With Final Antidumping Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of hardwood and decorative plywood from the People's Republic of China (PRC).

DATES: *Effective Date:* March 14, 2013.

FOR FURTHER INFORMATION CONTACT: David Lindgren, Toni Page, or Lingjun Wang, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3870, (202) 482–1398, and (202) 482–2316, respectively.

SUPPLEMENTARY INFORMATION:

Amendment

We released the preliminary determination to the parties on Wednesday, February 27, 2013. However, that version inadvertently included a typographical error in the ''Scope of the Investigation'' section. This amended preliminary determination corrects that error. The error was discovered prior to publication in the **Federal Register**, consequently this amended notice is being published in its place.

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

In addition to the countervailing duty (CVD) investigation on hardwood and decorative plywood, the Department also initiated an antidumping duty (AD) investigation of the same merchandise from the PRC.[1] The CVD and AD investigations have the same scope with regard to the merchandise covered.

On February 21, 2013, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final CVD determination with the final AD determination of hardwood and decorative plywood from the PRC.[2] Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 15, 2013, unless postponed.

[1] *See Hardwood and Decorative Plywood From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 77 FR 65172 (October 25, 2012).

[2] *See* Letter from Petitioners to the Department ''Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China—Request to Align Final Determination with Antidumping Investigation,'' (February 21, 2013).

Scope of the Investigation

The merchandise subject to this investigation is hardwood and decorative plywood. Hardwood and decorative plywood is a flat panel composed of an assembly of two or more layers or plies of wood veneers in combination with a core. The veneers, along with the core, are glued or otherwise bonded together to form a finished product. A hardwood and decorative plywood panel must have face and back veneers which are composed of one or more species of hardwoods, softwoods, or bamboo. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2009.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 millimeters (mm) (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

A ''veneer'' is a thin slice of wood which is rotary cut, sliced or sawed from a log, bolt or flitch. The face veneer is the exposed veneer of a hardwood and decorative plywood product which is of a superior grade than that of the back veneer, which is the other exposed veneer of the product (*i.e.,* as opposed to the inner veneers). When the two exposed veneers are of equal grade, either one can be considered the face or back veneer. For products that are entirely composed of veneer, such as Veneer Core Platforms, the exposed veneers are to be considered the face and back veneers, in accordance with the descriptions above.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to veneers, particleboard, and medium-density fiberboard (MDF).

All hardwood and decorative plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated, unless the surface coating obscures the grain, texture or markings of the wood. Examples of surface coatings which may not obscure the grain, texture or markings of the wood include, but are not limited to, ultra-violet light cured polyurethanes,

oil or oil-modified or water based polyurethanes, wax, epoxy-ester finishes, and moisture-cured urethanes. Hardwood and decorative plywood that has face and/or back veneers which have an opaque surface coating which obscures the grain, texture or markings of the wood, are not included within the scope of this investigation. Examples of surface coatings which may obscure the grain, texture or markings of wood include, but are not limited to, paper, aluminum, high pressure laminate (HPL), MDF, medium density overlay (MDO), and phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a ''distressed'' appearance through such methods as hand-scraping or wire brushing. The face veneer may be stained.

The scope of the investigation excludes the following items: (1) Structural plywood (also known as ''industrial plywood'' or ''industrial panels'') that is manufactured and stamped to meet U.S. Products Standard PS 1–09 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the ''bond performance'' requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A–570–970 and C–570–971 (published December 8, 2011); (4) plywood which has a shape or design other than a flat panel.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; and 4412.99.9000.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

Methodology

The Department is conducting this CVD investigation in accordance with section 701 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

The Department notes that, in making these findings, we have relied, in part, on facts available and, because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we have drawn an adverse inference where appropriate in selecting from among the facts otherwise available.[4] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise under investigation. We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate
Linyi City Dongfang Jinxin Economic & Trade Co., Ltd.	*de minimis*.
Linyi San Fortune Wood Co., Ltd.	*de minimis*.
Shanghai Senda Fancywood Inc. a/k/a Shanghai Senda Fancywood Industry Co.	*de minimis*.
Asia Dekor (Heyuan) Woods Co., Ltd.*	27.16 percent.
Baishan Huafeng Wooden Product Co.*	27.16 percent.
China Friend Limited*	27.16 percent.
Feixian Guangyuan Plywood Factory.*	27.16 percent.
Feixian Xinfeng Wood Co Ltd.*	27.16 percent.
Huzhou Chen Hang Wood Co. Ltd.*	27.16 percent.
Jiafeng Wood (Suzhou) Co., Ltd.*	27.16 percent.
Linyi Guoxin Wood Co., Ltd.*	27.16 percent.
Linyi Huayuan Wood Co., Ltd.*	27.16 percent.
Linyi Sengong Wood Co., Ltd.*	27.16 percent.
Lizhong Wood Industry Limited Co.*	27.16 percent.
Shandong Lichen Group Co., Ltd.*	27.16 percent.
Wellmade Floor Industries Co. Ltd.*	27.16 percent.
Zhejiang Dadongwu GreenHome Wood Co.*	27.16 percent.
Zhejiang Desheng Wood Industry Co., Ltd.*	27.16 percent.
All Others	22.63 percent.

* Non-cooperative company to which an adverse facts available rate is being applied. *See* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

In accordance with sections 703(d)(1)(B) and (2) of the Act, with the exception of Linyi City Dongfang Jinxin Economic & Trade Co., Ltd (Dongfang), Linyi San Fortune Wood Co., Ltd. (San Fortune), and Shanghai Senda Fancywood Co., Ltd. (Senda), we are

[3] *See* Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration regarding ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China,'' dated February 26, 2013 (Preliminary Decision Memorandum).

[4] *See* sections 776(a) and (b) of the Act.

directing U.S. Customs and Border Protection to suspend liquidation of all entries of hardwood and decorative plywood from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above. Because the subsidy rates for Dongfang, San Fortune, and Senda are *de minimis,* liquidation will not be suspended and no cash deposits will be required for merchandise that are produced and exported by Dongfang, San Fortune, and Senda.

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated. Where the rates for the investigated companies are all zero or *de minimis,* section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using ''any reasonable method.'' We preliminarily determine that a reasonable method for establishing the all-others rate is to calculate a simple average of the subsidy rates for all companies to which an individual subsidy rate was applied.

Disclosure and Public Comment

The Department will disclose calculations performed for this preliminary determination to the parties within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments for all non-scope issues may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[5] Following the publication of the preliminary determination in the companion AD investigation, the Department will establish a separate briefing schedule for scope issues. Parties must file separate and identical documents on both the AD and CVD records for any briefs related to scope only. Additionally, the Department intends to address specific scope exclusion requests in the preliminary determination of the companion AD investigation. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[6] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

[5] *See* 19 CFR 351.309.

[6] *See* 19 CFR 351.310(c).

Dated: March 7, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope Comments.
2. Scope of the Investigation.
3. Respondent Selection.
4. Injury Test.
5. Application of Countervailing Duty Law to Imports from the PRC.
6. Subsidies Valuation.
7. Use of Facts Otherwise Available and Adverse Inferences.
8. Analysis of Programs.
9. Verification.

[FR Doc. 2013–05929 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821; C–560–813; C–549–818]

Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, and Thailand: Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2010, the Department of Commerce (''the Department'') initiated the second sunset reviews of the countervailing duty (''CVD'') orders on certain hot-rolled carbon steel flat products (''HR steel'') from India, Indonesia, and Thailand pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and inadequate responses from respondent interested parties (in these cases, no responses), the Department conducted expedited sunset reviews of these CVD orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of these sunset reviews, the Department finds that revocation of the CVD orders would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Reviews'' section of this notice.

DATES: *Effective Date:* March 14, 2013.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds (India and Indonesia), Hilary Sadler or Dana Mermelstein (Thailand), AD/CVD Operations, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6071, (202) 482–4340 or 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2012, the Department initiated sunset reviews of the CVD orders on HR steel from India, Indonesia, and Thailand, pursuant to section 751(c) of the Act.[1] The Department received a notice of intent to participate in each of these reviews from the following domestic interested parties: United States Steel Corporation (U.S. Steel); ArcelorMittal USA, LLC (ArcelorMittal); Nucor Corporation (Nucor); Gallatin Steel (Gallatin); Steel Dynamics Inc. (Steel Dynamics), and SSAB Americas (SSAB) (collectively, ''domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.

The Department received adequate substantive responses collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any government or respondent interested party to the Indian or Indonesian proceedings. The Department received a substantive response from the Royal Thai Government but received no responses from the respondent interested parties, *i.e.,* the Thai exporters and producers of HR steel. The regulations provide, at 19 CFR 351.218 (e)(1)(ii)(A), that the Department will normally conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, on a volume basis (or a value basis, if appropriate), of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. Because the Department received no responses from the respondent interested parties, the Department conducted expedited reviews of these CVD orders, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

[1] *See Initiation of Five-Year (''Sunset'') Reviews,* 77 FR 66439 (November 5, 2012).

Scope of the Orders

The merchandise subject to these orders is hot-rolled steel of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these orders.

Specifically included within the scope of these orders are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of the orders, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical descriptions provided above are within the scope of the orders unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of the orders:

—Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, 3, American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506).
—Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.
—Ball bearings steels, as defined in the HTSUS.
—Tool steels, as defined in the HTSUS.
—Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
—ASTM specifications A710 and A736.
—USS Abrasion-resistant steels (USS AR 400, USS AR 500).
—All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
—Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to the orders is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90.

Certain hot-rolled carbon steel flat products covered by the orders, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel, may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00,

7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum for the Final Results of Expedited Second Sunset Reviews of the Countervailing Duty Orders on Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia (''Decision Memorandum'') and the Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Certain Hot-Rolled Carbon Steel Flat Products from Thailand (''Thai Decision Memorandum'') both of which are from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, are dated concurrently with this final notice, and are hereby adopted by this notice. Parties can find a complete discussion of all issues raised in these expedited sunset reviews and the corresponding recommendations in these public memoranda which are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Reviews

The Department determines that revocation of the CVD orders would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producers/Exporters	Net countervailable subsidy (percent)
India	
Essar Steel Limited	539.89
Ispat Industries Limited	563.50
Steel Authority of India (''SAIL'')	549.88
Tata Iron and Steel Company Limited	540.78
All other producers/manufacturers/exporters	547.71
Indonesia	
P.T. Krakatau Steel	10.21
All Others	10.21
Thailand	
Sahaviriya Steel Industries Public Company Limited (''SSI'')	2.38
All Others	2.38

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 5, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–05932 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

(NOAA) Science Advisory Board (SAB)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Wednesday, March 27, 2013 from 12:00 p.m. to 3:05 p.m. and Thursday, March 28, 2013 from 12:00 p.m. to 3:00 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: Conference call. Public access TBD in Silver Spring, MD. Please check the SAB Web site *http://www.sab.noaa.gov/Meetings/meetings.html* for address and directions to the meeting location. Members of the public will not be able to dial in to this meeting.

Status: The meeting will be open to public participation with a 10 minute public comment period on March 28 from 12:05–12:15 p.m. (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of two (2) minutes. Individuals or groups planning to make a verbal presentation should contact the SAB Executive Director by March 20, 2013 to schedule their presentation. Written comments should be received in the SAB Executive Director's Office by March 20, 2013 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after March 20, 2013 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on March 20, 2013, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910.

Matters To Be Considered: The meeting will include the following topics: (1) Final Report from the SAB Research and Development Portfolio Review Task Force; (2) Review Report on the Cooperative Institute for Ocean Exploration, Research and Technology (CIOERT); (3) NOAA Response to the SAB Report on Assessing Data from non-NOAA Sources; (4) NOAA Response to the SAB White Paper; On

the Need for a NOAA Environmental Data Management Framework; (5) Proposal for a RESTORE Act Working Group; (6) Membership for the Climate Working Group; and (7) Updates from SAB Working Groups.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459. Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: March 8, 2013.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–05899 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC059

Endangered Species; File No. 17022

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the NMFS Pacific Islands Fisheries Science Center (PIFSC; Samuel Pooley, Ph.D., Responsible Party), has been issued a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941;

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Rosa L. González, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On June 25, 2012, notice was published in the **Federal Register** (77 FR 37877) that a request for a scientific research permit to take green and hawksbill sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The PIFSC is authorized to begin long-term monitoring of green and hawksbill sea turtles in the remote U.S. Islands and Territories excluding Hawaii in the Central Pacific to estimate sea turtle abundance, size ranges, health status, habitat use, foraging ecology, local movements, and migration routes. Researchers may capture, examine, measure, flipper and passive integrated transponder tag, weigh, skin and blood sample, and/or attach transmitters on sea turtles before release. Researchers also may collect the carcasses, tissues and parts of dead sea turtles encountered during surveys. The permit is valid for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 11, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–05896 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service Advisory Board (the Advisory Board), which advises the Secretary of Commerce and the Director of the National Technical Information Service (NTIS) on policies and operations of the Service.

DATES: The Advisory Board will meet on Friday, April 19, 2012 from 9:00 a.m. to approximately 4:30 a.m.

ADDRESSES: The Advisory Board will be held in Room 115 of the NTIS Facility at 5301 Shawnee Road, Alexandria, Virginia 22312. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Borzino, (703) 605–6405, *bborzino@ntis.gov.*

SUPPLEMENTARY INFORMATION: The NTIS Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The morning session will focus on a review of NTIS performance in the first half of Fiscal Year 2013. The afternoon session is expected to focus on program plans for the remainder of Fiscal Year 2013. A final agenda and summary of the proceedings will be posted at NTIS Web site as soon as they are available (*http://www.ntis.gov/about/advisorybd.aspx*).

The NTIS Facility is a secure one. Accordingly persons wishing to attend should call the NTIS Visitors Center, (703) 605–6040, to arrange for admission. If there are sufficient expressions of interest, up to one-half hour will be reserved for public comments during the afternoon session. Questions from the public will not be considered by the Board but any person who wishes to submit a written question for the Board's consideration should mail or email it to the NTIS Visitor Center, *bookstore@ntis.gov,* not later than April 10, 2013.

Dated: March 11, 2013.

Bruce Borzino,

Director.

[FR Doc. 2013–05918 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Disposal and Reuse of the Naval Weapons Station Seal Beach Detachment Concord, City of Concord, California, and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS)

to evaluate the potential environmental consequences of the disposal and reuse of surplus property at the former Naval Weapons Station Seal Beach Detachment Concord (NWS Concord), Concord, Contra Costa County, California. In accordance with NEPA, before disposing of any real property, the DoN must analyze the environmental effects of the disposal of the NWS Concord property. A 30-day public scoping period is being held to receive comments on the scope of the EIS, including the range of actions, alternatives, and environmental concerns that should be addressed. Public scoping meetings will also be held in the City of Concord, California, to provide information and receive written comments on the scope of the EIS. Federal, state, and local agencies and interested individuals are invited to comment on the scope of the EIS and attend the public scoping meeting.

Dates and Addresses: Two public scoping meetings will be held on Thursday, April 4, 2013 at 4:00–6:00 p.m. and 7:00–9:00 p.m. at the Concord Senior Citizens Center (Wisteria Room), 2727 Parkside Circle, Concord, California, 94519. DoN representatives will be available to provide clarification as necessary related to the EIS. There will not be a formal presentation.

FOR FURTHER INFORMATION CONTACT: Director, NAVFAC BRAC PMO West, Attn: Mr. Ronald Bochenek, 1455 Frazee Road, Suite 900, San Diego, California 92108–4310, telephone 619–532–0906, fax 619–532–9858, email: *ronald.bochenek.ctr@navy.mil*.

For more information on the NWS Concord EIS visit the DoN BRAC PMO Web site (*http://www.bracpmo.navy.mil*).

SUPPLEMENTARY INFORMATION: In 2005, a portion of NWS Concord was designated for closure under the authority of Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, as amended. At the time, the former NWS Concord comprised two major land holdings— (1) the Tidal Area, along Suisun Bay and (2) the Inland Area, within the City of Concord. In 2008, the Tidal Area and 115 acres of the Inland Area were transferred to the U.S. Army and is now the Military Ocean Terminal Concord (6,419 acres in total). In addition, approximately 59 acres of the Inland Area, which supported military housing, was transferred to the U.S. Coast Guard. The remaining 5,038 acres of the Inland Area was declared surplus to the needs of the federal government on May 6, 2007 (72 FR 9935) and its disposal and reuse is the focus of this EIS.

The purpose of the proposed action is the disposal of surplus property at NWS Concord from federal ownership and its subsequent reuse in a manner consistent with the Concord Reuse Project Area Plan, as adopted by the City of Concord on January 24, 2012. The need for the proposed action is to provide the local community the opportunity for economic development and job creation. The DoN is the action proponent for the proposed action. The U.S. Army Corps of Engineers has requested to serve as a Cooperating Agency.

To assess the potential impacts of the proposed action, the DoN will evaluate two property reuse alternatives and a No Action Alternative. Alternative 1 is the reuse of the property in a manner consistent with the Concord Reuse Project Area Plan. Alternative 2 consists of a greater amount of residential and mixed-use development. Alternative 2 includes elements of the Connected Villages Alternative (Alternative 2) assessed in the 2008 Draft Environmental Impact Report of the City of Concord's Reuse Plan conducted in compliance with the California Environmental Quality Act. The No-Action Alternative is evaluated in detail in this EIS as prescribed by CEQ regulations. Both reuse alternatives assume full build-out over a 25-year period; the period of analysis will be during construction and when full build-out has been completed.

Alternative 1 is the disposal and reuse of surplus property at the former NWS Concord in a manner consistent with the Concord Reuse Project Area Plan. Under Alternative 1, approximately 69% of the property would be maintained as conservation, parks, or recreational land uses, and 31% would be mixed-use development, including a mix of office, retail, residential, community facilities, light industrial, and research and development/educational land uses. Development on the site would involve up to a maximum of 12,272 housing units and 6,100,000 square feet of commercial space over a total development footprint of approximately 1,545 acres. The remaining portion of the property would be utilized for conservation, parks, or recreational land uses, including a 2,537 acre regional park, which would encompass the east side of the property along the ridgeline of the Los Medanos Hills. The western side of the property would be developed as a series of mixed-use development districts, with higher development densities at the north end of the property, near State Route 4 and the North Concord/Martinez Bay Area Rapid Transit (BART) station, and lower density residential villages as you move south towards Bailey Road. The development districts would be serviced by local and connector streets and two new through-streets, Los Medanos Boulevard running north/south from the BART station and Delta Road running east/west paralleling Highway 4. In addition, the transportation network will include a high-capacity bus transit service that will connect the development to BART, downtown Concord, and the surrounding neighborhoods.

Alternative 2 would include a greater amount of development throughout the site, as approximately 60% of the property would be maintained as conservation, parks, or recreational land uses, and approximately 40% would be mixed-use development, including a mix of office, retail, hotel, residential, and community/institutional land uses. Development on the site would involve up to a maximum of 13,000 housing units, and 7,900,000 square feet of commercial space over a total development footprint of approximately 2,000 acres. The transportation network will include a high-capacity bus transit service throughout the site connecting the villages to downtown Concord and existing neighborhoods. An arterial road connecting Bailey Road and Willow Pass Road would be included east of Mt. Diablo Creek. Alternative 2 is included for the purposes of the NEPA analysis and does not imply a change to the City of Concord's adopted Area Plan and 2030 General Plan, which is the result of a public planning process. The DoN has no role in the community planning process.

The No Action Alternative is required by NEPA and evaluates the impacts at NWS Concord in the event that the surplus property is not disposed. Under this alternative the property would be retained by the DoN in caretaker status. No reuse or redevelopment would occur under this alternative.

The EIS will address potential direct, indirect, short-term, long-term, and cumulative impacts on the human and natural environments, including but not limited to potential impacts on topography, geology and soils; water resources; biological resources; air quality; greenhouse gases and climate change; noise; infrastructure and utilities; transportation, traffic, and circulation; cultural resources; land use; socioeconomics and environmental justice; hazards and hazardous substances; and public services. Known areas of concern associated with the proposed action include impacts on biological and cultural resources, impacts on local traffic patterns resulting from reuse scenarios, and the

cleanup of installation remediation sites.

The DoN is initiating a 30-day scoping period to receive comments on the scope of the EIS, including the range of actions, alternatives, and environmental concerns that should be addressed. Public scoping meetings will be held in the City of Concord, California, to provide information and receive written comments on the scope of the EIS. Federal, state, and local agencies and interested individuals are encouraged to comment on the scope of the EIS or attend the public scoping meetings. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address.

Comments can be made in the following ways: (1) Written comments at the scheduled public scoping meetings; or (2) written comments mailed to the DoN BRAC PMO address in this notice; or (3) written comments faxed to the DoN BRAC PMO fax number in this notice; or (4) comments submitted via email using the DoN BRAC PMO email address in this notice.

Written comments must be postmarked, faxed, or emailed by midnight Friday, April 19, 2013, and sent to: Director, NAVFAC BRAC PMO West, Attn: Mr. Ronald Bochenek, 1455 Frazee Road, Suite 900, San Diego, California 92108–4310, telephone 619–532–0906, fax 619–532–9858, email: *ronald.bochenek.ctr@navy.mil*.

Requests for special assistance, sign language interpretation for the hearing impaired, language interpreters, or other auxiliary aids for the scheduled public scoping meetings must be sent by mail or email by Friday, March 29, 2013 to the address provided in this notice.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–05925 Filed 3–13–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare the Commonwealth of the Northern Mariana Islands Joint Military Training Environmental Impact Statement/ Overseas Environmental Impact Statement

AGENCY: Department of the Navy, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations parts 1500–1508), and Executive Order 12114, and United States (U.S.) Marine Corps NEPA implementing regulations in Marine Corps Order P5090.2A, Marine Corps Forces, Pacific (MARFORPAC), as the Executive Agent designated by the U.S. Pacific Command (PACOM), announces its intent to prepare an Environmental Impact Statement (EIS)/Overseas EIS (OEIS) to evaluate the potential impacts associated with preliminary alternatives for meeting PACOM Service Components' unfilled unit level and combined level military training requirements in the Western Pacific. The proposed action is to establish a series of live-fire and maneuver Ranges and Training Areas (RTAs) within the Commonwealth of the Northern Mariana Islands (CNMI) to meet this purpose.

Existing Department of Defense (DoD) RTAs and support facilities in the Western Pacific, particularly those in the Mariana Islands, are insufficient to support PACOM Service Components' U.S. Code (U.S.C.) Title 10 training requirements for the region. The expansion of existing RTAs and construction of new RTAs will satisfy identified training deficiencies for PACOM forces that are based in or regularly train in the CNMI. These RTAs will be available to U.S. forces and their allies on a continuous and uninterrupted schedule. These RTAs are needed to support ongoing operational requirements, changes to U.S. force structure and geographic positioning of forces, and U.S. training relationships with allied nations.

MARFORPAC, as the Executive Agent, has invited the Federal Aviation Administration (FAA); International Broadcasting Bureau (IBB); U.S. Army Corps of Engineers; National Marine Fisheries Service; U.S. Fish and Wildlife Service; and U.S. Department of Interior, Office of Insular Affairs, to participate as cooperating agencies in the preparation of the EIS/OEIS. MARFORPAC has also developed a Memorandum of Understanding with the military services regarding their support and engagement in the development of the EIS/OEIS.

MARFORPAC encourages governmental agencies, private-sector organizations, and the general public to participate in the NEPA process for the EIS/OEIS. MARFORPAC is initiating the scoping process for the EIS/OEIS with this Notice of Intent (NOI). Scoping assists MARFORPAC in identifying community concerns and specific issues to be addressed in the EIS/OEIS. All interested parties are invited to attend the scoping meetings and are encouraged to provide comments. MARFORPAC will consider these comments in determining the scope of the EIS/OEIS.

DATES: Three public scoping meetings, using an open-house format, will be held on the following dates and locations in the CNMI:

- Wednesday, April 10, 2013, 5:00 p.m. to 8:00 p.m., Dandan Elementary School Cafeteria, Dandan Road, Dandan, Saipan, CNMI 96960
- Thursday, April 11, 2013, 4:00 p.m. to 7:00 p.m., Tinian Gym, San Jose, Tinian, CNMI 96950
- Friday, April 12, 2013, 5:00 p.m. to 8:00 p.m., Carolinian Utt, Garapan, Saipan, CNMI 96960

Concurrent with the NEPA process, MARFORPAC is initiating National Historic Preservation Act Section 106 Consultation to determine the potential effects of the proposed action on historic properties. During each of the above meetings, MARFORPAC will hold Section 106 meetings in a separate area where subject matter experts will explain the Section 106 process and solicit public input on the identification of historic properties and potential effects of the proposed action on historic properties.

Comments on the proposed action and preliminary alternatives may be submitted during the 45-day public scoping comment period. Comments should be postmarked or received by April 29, 2013, Chamorro Standard Time (ChST). There are three ways to submit written comments: (1) providing comments at one of the public scoping meetings; (2) submitting comments through the project Web site: *www.cnmijointmilitarytrainingeis.com*; and (3) mailing comments to the following address: Naval Facilities Engineering Command, Pacific, Attn: EV21, CNMI Joint Military Training EIS/OEIS Project Manager, 258 Makalapa Drive, Suite 100, JBPHH, HI 96860–3134.

FOR FURTHER INFORMATION CONTACT: Please visit the project Web site or contact the CNMI Joint Military Training EIS/OEIS Project Manager by telephone at 808–472–1253 or by email via the project Web site. Please submit requests for special assistance, sign language interpretation for the hearing impaired, or other auxiliary aids needed at the public scoping open house to the Project Manager by March 25, 2013.

SUPPLEMENTARY INFORMATION: The U.S. military is charged with upholding the U.S. Constitution, defending the United

States from all enemies foreign and domestic, and honoring commitments made in treaties and other international agreements. In particular, five of the seven treaties of mutual defense involve the Western Pacific. In order to accomplish these missions, Title 10 of the U.S.C. requires the Services to maintain, train, and equip combat-ready forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Modern warfare and security operations are complex undertakings, and U.S. military personnel must train regularly to maintain the necessary skills required to accomplish their constitutional and statutory mandates.

Beginning in 2009 with the Institute for Defense Analyses' (IDA) ''Department of Defense Training in the Pacific Study,'' and culminating in the January 2013 DoN Commonwealth of the Northern Mariana Islands Joint Military Training Requirements and Siting Study (RSS), DoD has documented joint military training deficiencies throughout the PACOM Area of Responsibility (AOR), and specifically within the CNMI. The 2009 IDA Study examined training capabilities utilized by the DoD in the PACOM AOR and concluded that current training deficiencies exist. The IDA study examined several potential solutions and concluded that the Mariana Islands' strategic location in the PACOM AOR makes these islands a prime location to support forces throughout the AOR. The IDA Study recommended that planning be initiated to analyze the ability to construct new, or expand existing training capabilities and support facilities in the Mariana Islands.

The need for joint service training in the Western Pacific was also recognized in the 2010 Quadrennial Defense Review (QDR). Specifically, the QDR concluded that the U.S. should develop additional training capabilities for joint and combined forces in the Western Pacific to assure readiness of U.S. forces to carry out military operations as well as humanitarian assistance, disaster relief, and maritime security. Furthermore, the QDR found that the available land within U.S. jurisdiction in the Pacific provided the potential for leveraging U.S. engagement with allied and partner militaries to build multilateral security relationships and operational capacity among the countries of the region.

The April 2012 DoN Training Needs Assessment: An Assessment of Current Training Ranges and Supporting Facilities in the U.S. Pacific Command Area of Responsibility further examined training deficiencies in the Western Pacific by dividing the PACOM AOR into four independent geographic areas or ''hubs'' representing the largest concentrations of U.S. forces: Japan (including Okinawa), Korea, Hawaii, and the Mariana Islands (Guam/CNMI). The assessment confirmed the earlier findings that the greatest number of training deficiencies exists in the Mariana Islands hub. The CNMI's criticality to providing an environment for joint training and stabilizing influence in the PACOM AOR was specifically mentioned in the April 2012 2+2 Statement between Japan and the U.S. wherein both nations expressed a keen desire to improve training capabilities in the CNMI.

The January 2013 RSS continued the analysis by focusing on those deficiencies found in the Mariana Islands and specifically in the CNMI. Service training operates on a crawl-walk-run continuum progressing from individual skills, to unit level to combined level training. The majority of individual skills training will be accomplished outside of the CNMI. The 42 unfilled training requirements documented in the January 2013 RSS are for unit level and combined level training. Unit level training consists of troops with similar military occupational specialties training on both live-fire and maneuver ranges to develop the skills necessary for the unit to carry out its mission. Combined level arms training brings several units together working as a team towards a single objective. Combined level training also involves maneuver and use of live-fire ranges and training areas; however, because of the greater number of units and tasks, this training requires larger areas. Because of the nature of unit and combined level training, along with the frequency of this training, separate range complexes are required to support each type of training.

The RSS further defined and developed the purpose and need for the proposed action of improving military training capabilities; refined and applied operational siting criteria for assessing preliminary alternatives within the CNMI; and applied those criteria to potential candidate locations within the CNMI in order to meet PACOM Service Components' unfilled training requirements. Of the 14 CNMI islands, the RSS found that only Tinian and Pagan are capable of meeting unit level and combined level screening criteria, and could potentially satisfy most of the unfilled training requirements for the CNMI. Neither Tinian nor Pagan can support all identified unfilled training requirements alone; however, in combination they present a variety of preliminary alternative RTA configurations.

Preliminary Alternatives: As part of this scoping effort, MARFORPAC has developed preliminary alternatives on the islands of Tinian and Pagan to meet the requisite training capabilities and capacity. The EIS/OEIS will also consider any other reasonable alternatives that are identified during the scoping period. MARFORPAC seeks to minimize impacts to non-DoD lands and the environment by establishing multi-purpose ranges with overlapping impact areas and surface danger zones, where possible, on existing DoD-controlled lands.

Preliminary alternatives are the improvement, development, and use of existing and new military training areas on the islands of Tinian and Pagan, to include surrounding U.S. and international water and airspace. With regards to Tinian, preliminary alternatives for unit level training consider laydowns with and without relocating the IBB Voice of America facility. To date, all Tinian preliminary alternatives require the use of all military leased land, including that which has been leased-back to the CNMI government for agricultural uses. For Pagan, all the preliminary alternatives for combined-level training propose using the entire island for military purposes.

Special use airspace will be needed over any island proposed for RTAs and MARFORPAC, as Executive Agent, will seek designation of such airspace in coordination with FAA once a Record of Decision has been completed for the EIS/OEIS. In addition, maritime danger zones may be required along the coastlines adjacent to DoD-controlled property.

Under the No Action Alternative, the proposed RTAs would not be constructed on the islands of Tinian and Pagan. The identified training deficit would persist and the existing Western Pacific RTAs would remain insufficient to support PACOM Service Components' Title 10 training requirements for the region. The No Action Alternative would continue current training activities, which include limited non-tactical live-fire and other non-live fire training, including amphibious warfare and urban warfare activities that are currently approved by DoD Service Components on Tinian and Pagan, as well as the other approved existing RTAs within the CNMI, as well as development of the four ranges on Tinian that were the subject of the 2010 Guam EIS Record of Decision. The No

Action Alternative does not meet the purpose and need of the proposed action.

Environmental Issues and Resources To Be Examined: After scoping is complete, the EIS/OEIS analysis will evaluate potential environmental impacts associated with each alternative selected for full analysis. Issues to be addressed include, but are not limited to, noise, cultural resources, transportation, utilities, socioeconomics, biological resources, geology and soils, water quality, air quality, airspace, land use, recreation, safety, hazardous materials and waste, visual resources, and environmental justice.

Resources, activities, and issues identified through the scoping process will be considered in the EIS/OEIS. The analysis will include an evaluation of direct and indirect impacts and will account for cumulative impacts from other relevant past, present and reasonably foreseeable future actions in the Mariana Islands.

Agency Consultations: MARFORPAC, as Executive Agent, will undertake appropriate consultations with regulatory entities pursuant to the Endangered Species Act, National Historic Preservation Act, Coastal Zone Management Act, Clean Water Act, and other applicable laws or regulations. Consultation may include, but will not be limited to, the following federal, state, and local agencies: U.S. Fish and Wildlife Service, National Marine Fisheries Service, the U.S. Army Corps of Engineers, National Park Service, CNMI Historic Preservation Office, and the CNMI Coastal Resources Management Office.

Schedule: This NOI initiates a 45-day scoping comment period to identify issues to be addressed in the EIS/OEIS and reasonable and feasible alternatives to implement the proposed action. The next step in the NEPA process occurs with publication of a Notice of Availability (NOA) in the **Federal Register** and local media, announcing release of the Draft EIS/OEIS and commencement of a 45-day public comment period. A notice will be published in local newspapers to advertise public scoping meetings for the project during the 45-day comment period. MARFORPAC, as the Executive Agent, will consider and respond to all comments received on the Draft EIS/OEIS when preparing the Final EIS/OEIS. MARFORPAC, as the Executive Agent, intends to issue the Final EIS/OEIS in late 2015, at which time an NOA will be published in the **Federal Register** and local media. The NOA will initiate a 30-day waiting period, after which the Assistant Secretary of the Navy will issue a Record of Decision.

Dated: March 8, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–05837 Filed 3–13–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Subcommittee Meeting of the Board of Advisors to the President, Naval Postgraduate School

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of The Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the aforementioned subcommittee will be held. (Parent Committee is: Board of Advisors (BOA) to the Presidents of the Naval Postgraduate School and the Naval War College (NPS). This meeting will be open to the public.

DATES: The meeting will be held on Wednesday, April 24, 2013, from 8:00 a.m. to 4:00 p.m. and on Thursday, April 25, 2012, from 8:00 a.m. to 4:00 p.m. Pacific Time Zone.

ADDRESSES: The meeting will be held at the Naval Postgraduate School, Ingersoll Hall, Room 361, 1 University Circle, Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA 93943–5001, telephone number 831–656–2514.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elicit the advice of the Board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between NPS and the Air Force Institute of Technology. The board examines the effectiveness with which the NPS is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the NPS as the board considers pertinent. Individuals without a DoD government/CAC card require an escort at the meeting location. For access, information, or to send written comments regarding the NPS BOA contact Ms. Jaye Panza, Designated Federal Officer, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax 831–656–3145 by April 16, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–05926 Filed 3–13–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0029]

Agency Information Collection Activities; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2013–2016

AGENCY: National Center for Education Statistics (NCES), Institute of Education Sciences (IES), ED.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), ED is proposing a revision of a current information collection.

DATES: Interested persons are invited to submit comments on or before May 13, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0029 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the

information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Integrated Postsecondary Education Data System (IPEDS) 2013–2016.

OMB Control Number: 1850–0582.

Type of Review: Revision of a Current Information Collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 77,600.

Total Estimated Number of Annual Burden Hours: 954,030.

Abstract: The Integrated Postsecondary Education Data System (IPEDS) is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS enables NCES to report on key dimensions of postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation rates, revenues and expenditures, faculty salaries, and staff employed. The IPEDS web-based data collection system was implemented in 2000–01, and it collects basic data from approximately 7,500 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in Title IV Federal financial aid programs. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 (Pub. L. 102–325)). IPEDS allows other (non-title IV) institutions to participate on a voluntary basis. About 200 elect to respond. IPEDS data are available to the public through the College Navigator and IPEDS Data Center Web sites. The National Center for Education Statistics (NCES) seeks authorization to continue its IPEDS data collection. Current authorization expires 6/30/2014 (OMB No. 1850–0582). We are requesting a new clearance for the 2014–15 and 2015–16 data collections now in order to provide institutions a one-year advance notice of changes to the current data collection. Because the already approved 2013–14 IPEDS data collection has not yet taken place, we are carrying over the documentation and estimated burden associated with the 2013–14 data collection.

Dated: March 11, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–05958 Filed 3–13–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, April 18, 2013, 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Rachel Blumenfeld, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken as Appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Rachel Blumenfeld as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Rachel Blumenfeld at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Rachel Blumenfeld at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2013Meetings.html*.

Issued at Washington, DC on March 11, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–05915 Filed 3–13–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting: correction.

SUMMARY: On March 4, 2013, the Department of Energy (DOE) published a notice of open meeting announcing a meeting on March 25–26, 2013 of the Environmental Management Site-Specific Advisory Board, Savannah River Site (78 FR 14088). This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O.

Box A, Aiken, SC 29802; Phone: (803) 952–7886.

Corrections

In the **Federal Register** of March 4, 2013, in FR Doc. 2013–04875, on page 14088, please make the following correction:

In that notice under **ADDRESSES**, first column, third paragraph, the meeting address has been changed. The original address was Westin Savannah Harbor, 1 Resort Drive, Savannah, GA 31421. The new address is Hilton Garden Inn, 1065 Stevens Creek Road, Augusta, GA 30907. The reason for this change is comply with DOE's current restrictions on non-essential travel.

Issued at Washington, DC, on March 11, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–05916 Filed 3–13–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1033–000.

Applicants: Linden VFT, LLC, PJM Interconnection, L.L.C.

Description: Linden VFT submits revisions to PJM OATT Schedule 16 to be effective 7/1/2013.

Filed Date: 3/5/13.

Accession Number: 20130305–5061.

Comments Due: 5 p.m. ET 3/26/13.

Docket Numbers: ER13–1034–000.

Applicants: California Independent System Operator Corporation.

Description: 2013–03–05 Concurrence with Blue Sky Ranch SGIA to be effective 7/6/2012.

Filed Date: 3/5/13.

Accession Number: 20130305–5076.

Comments Due: 5 p.m. ET 3/26/13.

Docket Numbers: ER13–1035–000.

Applicants: Palmco Power CA, LLC.

Description: Palmco Power CA FERC Electric Tariff to be effective 3/5/2013.

Filed Date: 3/5/13.

Accession Number: 20130305–5077.

Comments Due: 5 p.m. ET 3/26/13.

Docket Numbers: ER13–1036–000.

Applicants: California Independent System Operator Corporation.

Description: 2013–03–05— Concurrence with Dry Ranch SGIA to be effective 7/6/2012.

Filed Date: 3/5/13.

Accession Number: 20130305–5078.

Comments Due: 5 p.m. ET 3/26/13.

Docket Numbers: ER13–1037–000.

Applicants: Southwestern Public Service Company.

Description: 2013–3–5–GSEC–E&P-Mustang VI–0.1.0–NOC-Filing to be effective 3/6/2013.

Filed Date: 3/5/13.

Accession Number: 20130305–5083.

Comments Due: 5 p.m. ET 3/26/13.

Docket Numbers: ER13–1038–000.

Applicants: Pennsylvania Electric Company.

Description: Pennsylvania Electric Company submits Notice of Cancellation of Rate Schedule No. 74 with American Municipal Power, Inc.

Filed Date: 3/5/13.

Accession Number: 20130305–5100.

Comments Due: 5 p.m. ET 3/26/13.

Docket Numbers: ER13–1039–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3512; Queue No. X2–038 to be effective 2/7/2013.

Filed Date: 3/5/13.

Accession Number: 20130305–5104.

Comments Due: 5 p.m. ET 3/26/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05858 Filed 3–13–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–17–000.

Applicants: CPV Shore, LLC.

Description: Notice of Self-Certification as an EWG of CPV Shore, LLC.

Filed Date: 3/4/13.

Accession Number: 20130304–5128.

Comments Due: 5 p.m. ET 3/25/13.

Take notice that the Commission received the following electric rate filings:.

Docket Numbers: ER13–535–001.

Applicants: PJM Interconnection, L.L.C.

Description: Amendment to MOPR filing re the Feb 5, 2013 Order in ER13–535 to be effective 2/5/2013.

Filed Date: 3/4/13.

Accession Number: 20130304–5160.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–588–001.

Applicants: New York Independent System Operator, Inc.

Description: NYISO Compliance Revisions to OATT Interconnection Study Process to be effective 2/18/2013.

Filed Date: 3/4/13.

Accession Number: 20130304–5095.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–823–001.

Applicants: Castleton Commodities Merchant Trading LLC.

Description: Supplement to notice of succession to be effective 1/1/2013.

Filed Date: 3/4/13.

Accession Number: 20130304–5097.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–826–000.

Applicants: RPA Energy, Inc.

Description: RPA Energy, Inc. submits supplement to January 30, 2013 Application for Market Based Authority.

Filed Date: 2/20/13.

Accession Number: 20130220–5071.

Comments Due: 5 p.m. ET 3/13/13.

Docket Numbers: ER13–1024–000.

Applicants: Southern California Edison Company.

Description: Revised Added Facilities Rate for Agmts under WDAT to be effective 1/6/2013.

Filed Date: 3/4/13.

Accession Number: 20130304–5002.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–1028–000.

Applicants: Trupro Energy LLC.

Description: TruPro Energy Cancellation of Tariff to be effective 3/5/2013.

Filed Date: 3/4/13.

Accession Number: 20130304–5066.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–1029–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3514; Queue No. V3–052 to be effective 1/31/2013.

Filed Date: 3/4/13.

Accession Number: 20130304–5093.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–1030–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of PJM Service Agmt Nos. 3044, 3146, 3169 and 3170 to be effective 1/31/2013.

Filed Date: 3/4/13.

Accession Number: 20130304–5096.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–1031–000.

Applicants: Southern Indiana Gas and Electric Company.

Description: Petition for Limited Waiver of the PJM Interconnection, L.L.C. Open Access Transmission Tariff of Southern Indiana Gas and Electric Company.

Filed Date: 3/4/13.

Accession Number: 20130304–5147.

Comments Due: 5 p.m. ET 3/25/13.

Docket Numbers: ER13–1032–000.

Applicants: Southwest Power Pool, Inc.

Description: Settlement Agreement between Southwest Power Pool, Inc. and Municipal Energy Agency of Nebraska.

Filed Date: 3/4/13.

Accession Number: 20130304–5175.

Comments Due: 5 p.m. ET 3/25/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 05, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05857 Filed 3–13–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–830–000]

J.P. Morgan Ventures Energy Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of J.P. Morgan Ventures Energy Corporation's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is March 18, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: March 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05859 Filed 3–13–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1047–000]

Tesoro Refining & Marketing Company LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Tesoro Refining & Marketing Company LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is March 27, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive 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.

Dated: March 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05860 Filed 3–13–13; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Proposed Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation, 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, as required by the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The FDIC is soliciting comment concerning its information collection titled, ''Annual Stress Test Reporting Template and Documentation for Covered Banks with Total Consolidated Assets of $10 Billion to $50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act.''

DATES: Comments must be received by May 13, 2013.

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

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.* Include ''Annual Stress Test Reporting Template and Documentation for Covered Banks with Total Consolidated Assets of $10 Billion to $50 Billion'' on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 between 9 a.m. and 4:30 p.m. on business days.

Additionally, please send a copy of your comments to: By mail to the U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202.395.6974, Attention: Federal Banking Agency Desk Officer.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Gary Kuiper, 202.898.3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., NYA–5046, Washington, DC 20429. In addition, copies of the templates referenced in this notice can be found on the FDIC's Web site (*http://www.fdic.gov/regulations/laws/federal/propose.html*).

SUPPLEMENTARY INFORMATION: The FDIC is requesting comment on the following new proposed information collection:

Title: Annual Stress Test Reporting Template and Documentation for Covered Banks With Total Consolidated Assets of $10 Billion to $50 Billion Under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control Number: XXXXXXX.

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including state nonmember banks and state savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A state nonmember bank or state savings association is a ''covered bank'' and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a covered bank is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On October 15, 2012, the FDIC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirement.[6] This notice describes the reports and information required to meet the reporting requirements under section 165(i)(2) for covered banks with average total consolidated assets of $10 billion to $50 billion. These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)).

The FDIC intends to use the data collected through these proposed templates to assess the reasonableness of the stress test results of covered banks and to provide forward-looking information to the FDIC regarding a covered bank's capital adequacy. The FDIC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered bank. The stress test results are expected to support ongoing improvement in a covered bank's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The Dodd-Frank Act stress testing requirements apply to all covered banks, but the FDIC recognizes that many covered banks with consolidated total assets of $50 billion or more have been subject to stress testing requirements by the Board. The FDIC also recognizes that these banks' stress tests will be applied to more complex portfolios and therefore warrant a broader set of reports to adequately capture the results of the stress tests. These reports will

[1] Public Law 111–203, 124 Stat. 1376, July 21, 2010.

[2] 12 U.S.C. 5365(i)(2)(A).

[3] 12 U.S.C. 5301(12).

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 12 U.S.C. 5365(i)(2)(B).

[6] 77 FR 62417, October 15, 2012.

necessarily require more detail than would be appropriate for smaller, less complex institutions. Therefore, the FDIC has decided to specify separate reporting templates for covered banks with total consolidated assets between $10 billion and $50 billion and for covered banks with total consolidated assets of $50 billion or more.[7] While the general reporting categories are the same (income statement, balance sheet and capital), the level of granularity for individual reporting items is less for $10 billion to $50 billion covered banks. For example, accounting for provisions by category is not required, and less detail is required for commercial and industrial lending. Because smaller banks with assets of $10 billion to $50 billion generally have less complex balance sheets, the FDIC believes that highly detailed reporting is not warranted, and so the FDIC is not requiring supplemental schedules on such areas as retail balances, securities and trading, operational risk, and pre-provision net revenue (PPNR). However, where a covered bank with assets less than $50 billion is affiliated with an organization with assets of $50 billion or more, the FDIC reserves the authority to require that covered bank to use the reporting template for larger banks with total consolidated assets of $50 billion or more.

The FDIC has worked closely with the Board and the Office of the Comptroller of the Currency (OCC) to make the agencies' respective rules implementing annual stress testing under the Dodd-Frank Act consistent and comparable by requiring similar standards for scope of application, scenarios, data collection and reporting forms. The FDIC has worked to minimize any potential duplication of effort related to the annual stress test requirements. The reporting templates for covered banks with assets of $10 billion to $50 billion or more are described below.

Description of Reporting Templates for Covered Banks With $10 Billion to $50 Billion in Assets

The ''Annual Stress Test Reporting Template and Documentation for Covered Banks with Total Consolidated Assets of $10 Billion to $50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act'' ($10B-$50B results template) includes data collection worksheets necessary for the FDIC to assess the company-run stress test results for baseline, adverse and severely adverse scenarios as well as any other scenario specified in accordance with regulations specified by the FDIC. The $10B-$50B results template includes worksheets that collect information on the following areas:

1. Income Statement;
2. Balance Sheet; and
3. Capital.

Each $10 billion to $50 billion covered bank reporting to the FDIC using this form will be required to submit to the FDIC separate worksheets for each scenario provided to covered banks in accordance with regulations implementing Section 165(i)(2) as specified by the FDIC.

Worksheets: Income Statement

The income statement worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected losses and revenues in the following categories.

1. Net charge-offs;
2. Pre-provision net revenue;
3. Provision for loan and lease losses;
4. Realized gains (losses) on held to maturity (HTM) and available-for-sale (AFS) securities;
5. All other gains (losses);
6. Taxes;

Memoranda items:

7. Net gains and losses on sales of other real estate owned; and
8. Total other than temporary impairment (OTTI) losses.

This schedule provides information used to assess losses that covered banks can sustain in baseline, adverse and severely adverse stress scenarios.

Worksheets: Balance Sheet

The balance sheet worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected equity capital, as well as on assets and liabilities in the following categories.

1. Loans;
2. HTM securities;
3. AFS securities;
4. Trading assets;
5. Total intangible assets;
6. Other real estate;
7. All other assets;

Memoranda items:

8. Loans and leases guaranteed by other U.S. government or GSE guarantees (non-FDIC loss sharing agreements);
9. Troubled debt relationships;
10. Loans secured by 1–4 family in foreclosure;
11. Retail funding (core deposits);
12. Wholesale funding;
13. Trading liabilities;
14. All other liabilities;
15. Perpetual preferred stock and related surplus;
16. Common stock;
17. Surplus;
18. Retained earnings;
19. Other equity capital components; and
20. Additional Memoranda items: Average rates for loans, securities, retail funding, wholesale funding, interest-bearing deposits, trading and other liabilities.

The FDIC intends to use this worksheet to assess the projected changes in assets and liabilities that a covered bank can sustain in an adverse and severely adverse stress scenario. This worksheet will also be used to assess the revenue and loss projections identified in the income statement worksheet.

Worksheets: Capital

The capital worksheet, which is appended to the balance sheet worksheet, collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on the following areas.

1. Unrealized gains (losses) on AFS securities;
2. Disallowed deferred tax asset;
3. Tier 1 common capital elements;
4. Tier 1 capital;
5. Tier 2 capital;
6. Total risk based capital;
7. Total capital;
8. Risk weighted assets;
9. Total assets for leverage purposes;
10. Tier 1 common equity ratio;
11. Tier 1 risk based capital ratio;
12. Tier 1 leverage ratio;
13. Total risk based capital ratio;

Memoranda items:

14. Sale, conversion, acquisition or retirement of capital stock;
15. Cash dividends declared on preferred stock; and
16. Cash dividends declared on common stock.

In addition to the information collected on the capital worksheet, the Summary Schedule captures projections for regulatory capital ratios over the planning horizon by scenario.

The FDIC intends to use these worksheets to assess the impact on capital of the projected losses and projected changes in assets that the covered bank can sustain in a stressed scenario. In addition to reviewing the worksheet in the context of the balance sheet and income statement projections, the FDIC also intends to use this worksheet to assess the adequacy of the capital plans and capital planning processes for each covered bank.

[7] *See* 77 FR 52718 for the Paperwork Reduction Act Notice and the FDIC Web site at *http://www.fdic.gov/regulations/laws/federal/2012/2012-ad91/2012-ad91_templates.html* for the reporting templates for covered banks with total consolidated assets of $50 billion or more.

Description of FDIC Dodd Frank Annual Stress Test (DFAST) Scenario Variables Template

To conduct the stress test required under this rule, a covered bank may need to project additional economic and financial variables to estimate losses or revenues for some or all of its portfolios. In such a case, the covered bank is required to complete a DFAST Scenario Variables worksheet for each scenario where such additional variables are used to conduct the stress test. Each scenario worksheet collects the variable name (matching that reported on the Scenario Variable Definitions worksheet), the actual value of the variable during the third quarter of the reporting year, and the projected value of the variable for nine future quarters.

Description of Supporting Documentation

Covered banks with total consolidated assets of $10 billion to $50 billion must submit clear documentation of the projections included in the worksheets to support efficient and timely review of annual stress test results by the FDIC. The supporting documentation should be submitted electronically and is not expected to be reported in the workbooks used for required data reporting. This supporting documentation must describe the types of risks included in the stress test; describe clearly the methodology used to produce the stress test projections; describe the methods used to translate the macroeconomic factors into a covered bank's projections; and also include an explanation of the most significant causes for the changes in regulatory capital ratios. The supporting documentation also should address the impact of anticipated corporate events, including mergers, acquisitions or divestitures of business lines or entities, and changes in strategic direction, and should describe how such changes are reflected in stress test results, including the impact on estimates of losses, expenses and revenues, net interest margins, non-interest income items, and balance sheet amounts.

Where company-specific assumptions are made that differ from the broad macroeconomic assumptions incorporated in stress scenarios provided by the FDIC, the documentation must also describe such assumptions and how those assumptions relate to reported projections. Where historical relationships are relied upon, the covered banks must describe the historical data and provide the basis for the expectation that these relationships would be maintained in each scenario, particularly under adverse and severely adverse conditions.

Type of Review: New collection.

Affected Public: State nonmember banks and state savings associations supervised by the FDIC with total consolidated assets of $10 billion to $50 billion.

Burden Estimates

The FDIC estimates the burden of this collection of information as follows:

Estimated Number of Respondents: 22.

Estimated Annual Burden per Respondent: 464 hours.

Estimated Total Annual Burden: 10,208 hours.

The burden for each $10 billion to $50 billion covered bank that completes the $10B–$50B results template is estimated to be 440 hours for a total of 9,680 hours. This burden includes 20 hours to input these data and 420 hours for work related to modeling efforts. The estimated burden for each $10 billion to $50 billion covered bank that completes the annual DFAST Scenarios Variables Template is estimated to be 24 hours for a total of 528 hours. The start-up burden for new respondents is estimated to be 93,600 hours and ongoing revisions for existing firms, 4,160 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will be 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 FDIC, including whether the information has practical utility;

(b) The accuracy of the FDIC'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 on respondents, including through the use of automated collection techniques or other forms of information technology;

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information; and

(f) The ability of FDIC-supervised banks and thrifts with assets between $10 billion and $50 billion to provide the requested information to the FDIC by March 31, 2014.

Dated at Washington, DC, this 7th day of March 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–05914 Filed 3–13–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCMENT —78 FR 14791 (March 7, 2013)

DATE AND TIME: *Tuesday, March 12, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

CHANGES IN THE MEETING —The March 12, 2013 meeting will be continued on Thursday, March 14, 2013.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–05959 Filed 3–12–13; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend through June 30, 2016, the current Paperwork Reduction Act (''PRA'') clearance for the FTC's enforcement of the information collection requirements in its regulation ''Duties of Furnishers of Information to Consumer Reporting Agencies'' (''Information Furnishers Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the furnisher provisions (subpart E) of the CFPB's Regulation V regarding other entities. That clearance expires on June 30, 2013.

DATES: Comments must be filed by May 13, 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 ''Information Furnishers Rule, PRA Comment, P135407,'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/infofurnishersrulepra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Ave. NW., Room NJ–8100, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC's rulemaking authority for the furnisher provisions of the Fair Credit Reporting Act (''FCRA''),[2] on July 21, 2011.[3] For certain other portions of the FCRA, the FTC retains its rulemaking authority.[4]

The FTC retains rulemaking authority for its Information Furnishers Rule solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[5]

In addition, the FTC retains its authority to enforce the furnisher provisions of the FCRA and the FTC and CFPB rules issued under those provisions. Thus, the FTC and CFPB have overlapping enforcement authority for many entities subject to the CFPB rule and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the furnisher provisions (subpart E) of CFPB's Regulation V.[6] Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies' respective burden estimates reflecting their overlapping enforcement jurisdiction, with the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. The discussion below continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

Burden Statement

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Under section 660.3 of the FTC's Information Furnishers Rule[7] and section 1022.42 of the CFPB Rule,[8] furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a consumer reporting agency (''CRA'').[9] Section 660.4 of the FTC Rule and section 1022.43 of the CFPB Rule require that entities which furnish information about consumers to a CRA respond to direct disputes from consumers. These provisions also require that a furnisher notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant (''F/I dispute'').

The FTC's currently cleared burden totals, post-adjustment for the effects of the Dodd-Frank Act, are 61,034 hours with $2,440,575 in associated labor costs.[10] Estimated capital/non-labor costs remain listed as $0 because Commission staff had reiterated its belief that the Rule imposes negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and/or equipment (*e.g.,* offices and computers) for the information collections within the Rule.

The past burden analysis, tied to when the Rule was newly promulgated, accounted for one-time burdens particular to the first year of the Rule's implementation and a relatively greater weighting of burden within that first year for certain recurring obligations under the Rule. Now, however, with several years having passed since inception, FTC staff's updated estimates reflect solely the remaining recurring burdens, as further reduced for the educational curve and diminishing measures needed to maintain compliance with the Rule.

Thus, using solely the currently cleared estimates (post-adjustment for the effects of the Dodd-Frank Act) of the number of applicable motor vehicle dealers and their assumed recurring disclosure burdens, the FTC proposes the following:

Estimated number of respondents: 3,986.[11]

---

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1681 *et seq.*

[3] Dodd-Frank Act, § 1061. This date was the ''designated transfer date'' established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date,* 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

[4] The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (''Red Flag Guidelines and Regulations Required'') and 628 (''Disposal of Records''). *See* 15 U.S.C. 1681s(e); Public Law 111–203, section 1088(a)(10)(E). Accordingly, the Commission retains full rulemaking authority for its ''Identity Theft Rules,'' 16 CFR part 681, and its rules governing ''Disposal of Consumer Report Information and Records,'' 16 CFR part 682. *See* 15 U.S.C. 1681m, 1681w.

[5] *See* Dodd-Frank Act, § 1029(a), (c).

[6] 76 FR 79308 (Dec. 21, 2011).

[7] 16 CFR part 660.

[8] 12 CFR part 1022.

[9] The rule defines a ''furnisher'' as an entity that furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report, but provides that an entity is not a furnisher when it: Provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

[10] OMB Control No. 3084–0144.

[11] Given the broad scope of furnishers, it is difficult to determine precisely the number of them that are subject to the FTC's jurisdiction. Nonetheless, Commission staff estimated that the regulations affect approximately 6,133 such furnishers. *See* 74 FR 31484, 31505 n. 56 (July 1, 2009 FTC and Federal financial agencies final rules). It is equally difficult to determine precisely the number of motor vehicle dealers that furnish information related to consumers to a CRA for inclusion in a consumer report. For purposes of estimating its motor vehicle dealer furnisher carve-out, the FTC has assumed that 30% of the 6,133 furnishers, or 1,840 furnishers, constitute the number of motor vehicle dealers over which the FTC retains exclusive jurisdiction under the Dodd-Frank Act. To derive this 30% estimate, Commission staff divided an estimated number of car dealers—55,417 (based on industry data for the number of franchise/new car and independent/used car dealers) by 199,500 (Commission staff's PRA estimate of the number of entities that extend credit to consumers subject to FTC jurisdiction under the FCRA, pre-Dodd-Frank, for the Risk-Based Pricing regulations, as detailed at 75 FR 2724, 2748 n.18 (Jan. 15, 2010)). This came out to 28%. Staff increased this amount to 30% to account for other motor vehicle dealer types (motorbikes, boats, other recreational) also covered within the definition of ''motor vehicle dealer'' under section 1029(a) of the Dodd-Frank Act. The resulting apportionment for motor vehicle dealers was subtracted from the base figure (6,133) to determine the net amount (4,293)

Section 660.3 of FTC Rule/Section 1022.42 of CFPB Rule

A. Burden Hours

Yearly recurring burden of 2 hours for training [12] to help ensure continued compliance regarding written policies and procedures for the accuracy and integrity of the information furnished to a CRA about consumers.

3,986 respondents × 2 hours for training = 7,972 hours.

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use managerial and/or professional technical personnel to train company employees in order to foster continued compliance with the information collection requirements in the Information Furnishers Rule and the furnisher provisions of Regulation V.

7,972 hours × $47.73 [13] = $380,503.

Section 660.4 of FTC Rule/Section 1022.43 of CFPB Rule

A. Burden Hours

No recurring burden other than that necessary to prepare and distribute F/I notices (estimate: 14 minutes per notice [14]).

1. 21,720 F/I disputes (estimated number received by furnishers under the FTC's jurisdiction [15]).

2. ''Carve-out'' to FTC: assumed 4% [16] = 869 F/I disputes.

3. 21,720 F&I disputes − 869 ''carve-out'' = 20,851 respondents for CFPB–FTC split.

a. Divided by 2 = 10,425 F/I disputes, co-jurisdiction estimate.

b. CFPB: 10,425 F/I disputes.

c. FTC: 869 ''carve-out'' + 10,425 additional F/I disputes = 11,294 F/I disputes.

d. FTC: 11,294 F/I disputes × 14 minutes each = 2,635 hours.

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use skilled administrative support personnel to provide the required F/I dispute notices to consumers.

2,635 hours × $20.89 [17] = $55,045.

Thus, total estimated burden under the above-noted regulatory sections is 10,607 hours and $435,548.

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before May 13, 2013.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 13, 2013. Write ''Information Furnishers Rule, PRA Comment, P135407'' 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 provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[18] 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/infofurnishersrulepra,* 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 ''Information Furnishers Rule, PRA Comment, P135407'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

subject to 50:50 apportionment (approximately 2,146 each) between the FTC and CFPB. Thus, 1,840 motor vehicle dealers + 2,146 other entities = 3,986 respondents for the FTC's burden calculations.

[12] 74 FR at 31505.

[13] *http://www.bls.gov/news.release/archives/ocwage_03272012.pdf:* ''Occupational Employment and Wages—May 2011,'' Bureau of Labor Statistics, U.S. Department of Labor, released March 2012, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2011'') (hereinafter, ''BLS Table 1''). *See* mean hourly wage for ''Training and Development Managers.''

[14] 74 FR at 31505.

[15] *Id.* at 31506 n. 58.

[16] FTC staff believes that 4% is a reasonable estimate based on recent data. *See ''Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus handle consumer data,''* December 2012, pp. 14, 29, 31, 34. The CFPB report noted that almost 40% of all consumer disputes at the nationwide CRAs, on average, can be linked to collections. It stated that collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines—specifically, four times higher than auto. These figures seem to suggest that almost 10% of all consumer disputes at the nationwide CRAs, on average, can be linked to auto. When the FTC issued its final Rule, FTC staff estimated that 40% of direct disputes would result in the sending of F/I dispute notices. *See* 74 FR 31506 n.58. The FTC's estimate of 4% is based on taking forty percent of the 10% of all consumer disputes at the nationwide CRAs, on average, linked to auto loans.

[17] *See* BLS Table 1. This figure represents an average drawn from mean hourly wages of potentially analogous employee types: first-line supervisors of office support ($25.16); accounting and auditing clerks ($17.37); brokerage clerks ($21.06); eligibility interviewers, government programs ($19.95).

[18] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission Web site at *www.ftc.gov* to read this Notice. 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 May 13, 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.*

David C. Shonka,

Acting General Counsel.

[FR Doc. 2013–05862 Filed 3–13–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0179; Docket 2012–0076; Sequence 24]

Submission for OMB Review; Service Contracts Reporting Requirements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information 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 a new information collection requirement for Service Contracts Reporting Requirements. An initial notice soliciting public comments on the information collection was published in the **Federal Register** at 76 FR 22070, on April 20, 2011, as part of a proposed rule under FAR Case 2010–0010. The public comments received on only the information collection are addressed in this notice under, ''Supplementary Information.'' Comments on the rest of the proposed rule will be addressed with the issuance of the final rule.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at the address shown below on or before April 15, 2013.

ADDRESSES: Submit comments in response to OMB Control 9000–0179, 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 OMB Control 9000–0179 at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''OMB Control 9000–0179'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, FAR Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., Washington, DC 20405.

Instructions: Please submit comments only and cite OMB Control 9000–0179, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Contract Policy Division at (202) 501–00650 or via email at *edward.loeb@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) requires executive agencies covered by the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270), except DoD, to submit to the Office of Management and Budget (OMB) annually an inventory of activities performed by service contractors. DoD is exempt from this reporting requirement because 10 U.S.C 2462 and 10 U.S.C. 2330a(c) already require DoD to develop an annual service contract inventory.

House Report 111–366 notes, in connection with section 743, that, ''in the absence of complete and reliable information on the extent of their reliance on service contractors, Federal agencies are not well-equipped to determine whether they have the right balance of contractor and in-house resources needed to accomplish their missions. Therefore, this rule intends to supplement agency annual service contract reporting requirements with the contractor provided service contract reporting information.

The information is to be submitted pursuant to a new clause and solicitation provision. Certain prime service contractors will provide annually—

a. The contract number, and, as applicable, order number;

b. The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract;

c. The number of contractor direct labor hours expended on the services performed during the previous Government fiscal year; and

d. Data reported by subcontractors.

The prime contractor shall require each first-tier subcontractor performing under the contract to provide annually—

a. The subcontract number (including subcontractor name and if available, DUNS number; and

b. The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

In order to invoice the government for time-and-material/labor-hour (T&M/LH) and cost-reimbursement contracts, contractors already track labor hours expended, so the rule will cover T&M/LH and cost-reimbursement contracts over the simplified acquisition threshold.

In an effort to keep the reporting burden to the absolute minimum on civilian agencies and their service contractors, a phased-in approach will be used for fixed-price contract awards. Fixed price contracts will be covered if the estimated total value is at or above $5 million in FY 2013, $2.5 million in FY 2014, $1 million in FY 2015 and $500,000 in FY 2016 and thereafter.

For indefinite-delivery contracts, including but not limited to, indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition contracts (GWACs), and multi-agency contracts, reporting requirements will be determined based on the expected dollar amount and type of the orders issued under the contracts.

Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as: (1) A performance period that extends beyond October 1, 2013, and (2) $5 million or more remaining to be obligated to the indefinite-delivery contract.

B. Discussion of Comment

Comment: One respondent considered the methodology used to calculate the hours needed to prepare responses and the reporting requirement estimates in the Paperwork Reduction Act (PRA) submission to be grossly underestimated.

Response: The Councils have reviewed the comment and believe the estimated time to report per contract is

reasonable at one hour to calculate the data and one hour to enter the data at *www.acquisition.gov*. The estimated 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 indicated the burden is underestimated, the estimated burden remains unchanged. 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

Respondents: 23,845.

Responses/respondent: 1.

Total annual Responses: 23,845.

Preparation hours per response: 2.

Total response burden hours: 47,690.

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 No. 9000–0179, Service Contracts Reporting Requirements, in all correspondence.

Dated: March 8, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–05787 Filed 3–13–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0017]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570, or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Application for Training (OMB No. 0920–0017, Expiration 03/31/2013)—Revision—Scientific Education and Professional Development Program Office (SEPDPO), Office of Surveillance, Epidemiology and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC offers public health training activities to professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training to learn up-to-date public health practices. CDC's training activities include laboratory training, classroom study, online training, and distance learning. CDC uses two training application forms, the Training and Continuing Education Online New Participant Registration Form and the National Laboratory Training Network Registration Form, to collect information necessary to manage and conduct training pertinent to the agency's mission.

CDC requests OMB approval to continue to collect information through these forms to (1) grant public health professionals the continuing education they need to maintain professional licenses and certifications, (2) create a transcript or summary of training at the participant's request, (3) generate management reports, and (4) maintain training statistics; and a revision that will allow CDC to comply with new continuing education accreditation organization requirements for collection of additional profession-specific data.

Accrediting organizations require a method of tracking participants who complete an educational activity; collecting demographic data allows CDC to meet this requirement. Several accrediting organizations require a permanent record that includes the participant's name, address, and phone number, to facilitate retrieval of historical information about when a participant completed a course or several courses during a time period. This information provides the basis for a transcript or for determining whether a person is enrolled in more than one course. CDC uses the email address to verify the participant's electronic request for transcripts, verify course certificates, and send confirmation that a participant is registered for a course.

Tracking course attendance and meeting accrediting organizations' standards for reporting require uniform and standardized training application forms. The standardized data these forms request for laboratory training, classroom study, online training, and distance learning are not requested elsewhere. These forms do not duplicate requests for information from participants. Data are collected only once per course or once per new registration. The annual burden table has been updated to reflect an increase in distance learning to 6,792 burden hours; that is an average burden of 5 minutes per respondent. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Health Professionals	Training and Continuing Education Online New Participant Registration Form (Attachment 4).	75,000	1	5/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Laboratorians	National Laboratory Training Network Registration Form (Attachment 3).	6,500	1	5/60

Dated: March 7, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–05821 Filed 3–13–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–484, CMS–10152, CMS–10449]

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) 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:* Reinstatement of a previously approved collection; *Title:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Documentation Requirements; *Use:* Under Section 1862(a)(1)(A) of the Social Security Act (the Act), 42 U.S.C. 1395y(a), the Secretary may only pay for items and services that are ''reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.'' In order to assure this, CMS and its contractors develop Medical policies that specify the circumstances under which an item or service can be covered. The certificate of medical necessity (CMN) provides a mechanism for suppliers of Durable Medical Equipment, defined in 42 U.S.C. 1395x (n), and Medical Equipment and Supplies defined in 42 U.S.C. 1395j(5), to demonstrate that the item being provided meets the criteria for Medicare coverage. Section 1833(e), 42 U.S.C. 1395l(e), provides that no payment can be made to any provider of services, or other person, unless that person has furnished the information necessary for Medicare or its contractor to determine the amounts due to be paid. Certain individuals can use a CMN to furnish this information, rather than having to produce large quantities of medical records for every claim they submit for payment. Under Section 1834(j)(2) of the Act, 42 U.S.C. 1395m(j)(2), suppliers of DME items are prohibited from providing medical information to physicians when a CMN is being completed to document medical necessity. The physician who orders the item is responsible for providing the information necessary to demonstrate that the item provided is reasonable and necessary and the supplier shall also list on the CMN the fee schedule amount and the suppliers charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician. Any supplier of medical equipment who knowingly and willfully distributes a CMN in violation of this restriction is subject to penalties, including civil money penalties (42 U.S.C. 1395m(j)(2)(A)(iii)). Under title 42 of the Code of Federal Regulations, §§ 410.38 and 424.5, Medicare has the legal authority to collect sufficient information to determine payment for oxygen, and oxygen equipment. Oxygen and oxygen equipment is by far the largest single total charge of all items paid under durable medical equipment coverage authority. Detailed criteria concerning coverage of home oxygen therapy are found in Medicare Carriers Manual Chapter II—Coverage Issues Appendix, Section 60–4. For Medicare to consider any item for coverage and payment, the information submitted by the supplier (e.g., claims and CMNs), including documentation in the patient's medical records must corroborate that the patient meets Medicare coverage criteria. The patient's medical records may include: physician's office records; hospital records; nursing home records; home health agency records; records from other healthcare professionals or test reports. This documentation must be available to the DME MACs upon request. *Form Number:* CMS–484 (OCN: 0938–0534); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits, Not-for-profits; *Number of Respondents:* 8,880; *Total Annual Responses:* 1,541,359; *Total Annual Hours:* 308,271. (For policy questions regarding this collection contact Doris Jackson at 410–786–4459. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title:* Data Collection for Medicare Beneficiaries Receiving NaF–18 Positron Emission Tomography (PET) to Identify Bone Metastasis in Cancer; *Use:* In Decision Memorandum #CAG–00065R, issued on February 26, 2010, the Centers for Medicare and Medicaid Services (CMS) determined that the evidence is sufficient to conclude that for Medicare beneficiaries receiving NaF–18 PET scan to identify bone metastasis in cancer is reasonable and necessary only when the provider is participating in and patients are enrolled in a clinical study designed to information at the time of the scan to assist in initial antitumor treatment planning or to guide subsequent treatment strategy by the identification, location and quantification of bone metastases in beneficiaries in whom bone metastases are strongly suspected based on clinical symptoms or the results of other diagnostic studies. Qualifying clinical studies must ensure that specific hypotheses are addressed; appropriate data elements are collected; hospitals and providers are qualified to provide the PET scan and interpret the results; participating hospitals and providers accurately report data on all

Medicare enrolled patients; and all patient confidentiality, privacy, and other Federal laws must be followed. Consistent with section 1142 of the Social Security Act (the Act), the Agency for Healthcare Research and Quality (AHRQ) supports clinical research studies that CMS determines meets specified standards and address the specified research questions. To qualify for payment, providers must prescribe certain NaF–18 PET scans for beneficiaries with a set of clinical criteria specific to each solid tumor. The statuary authority for this policy is section 1862(a)(1)(E) of the Act. The need to prospectively collect information at the time of the scan is to assist the provider in decision making for patient management. *Form Number:* CMS–10152 (OCN: 0938–0968); *Frequency:* Annual; *Affected Public:* Private Sector—Business or other for-profits; *Number of Respondents:* 25000; *Total Annual Responses:* 25000; *Total Annual Hours:* 2,084 hours. (For policy questions regarding this collection contact Stuart Caplan at 410–786–8564. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision; *Title of Information Collection:* Recognized Accrediting Entities Data Collection; *Use:* The final rule that was released on July 20, 2012 (77 FR 42658) establishes a process for recognizing accrediting entities for the purposes of implementing section 1311(c)(1)(D)(i) of the Affordable Care Act. In order for a health plan to be certified as a QHP and operate in an Exchange, it must be accredited by an accrediting entity that has been recognized by the Secretary of Health and Human Services. The final rule establishes the first phase of a two-phased process for recognition of accrediting entities. In phase one, the National Committee for Quality Assurance (NCQA) and URAC were recognized as accrediting entities for the purposes of fulfilling the accreditation requirement as part of qualified health plan certification. In a subsequent final rule, released February 22, 2013, we amended the first phase of this process to allow additional accrediting entities to apply to be recognized. The assessment used to assess these additional accrediting entities will be the same as the assessment underlying the recognition of NCQA and URAC. This information collection is necessary to ensure that the recognized accrediting entities meet the proposed conditions. 45 CFR 156.275(c) requires that the accrediting entities provide accreditation survey data elements, including accreditation status, accreditation score, accreditation expiration date, clinical quality measure results and adult and child CAHPS measure survey results to the Exchanges once these data are released by the issuers. Further, accrediting entities applying to be recognized must provide to HHS the accreditation standards and requirements, processes, and measure specifications for performance measures and, once recognized, any proposed changes or updates to these standards, and requirements, processes and measure specifications with 60-day notice prior to public notification. This collection, which is approved under OCN: 0938–1176), is necessary in order for Exchanges to verify that the QHPs being offered in their Exchange meet the accreditation requirement and are high quality plans.

The 60-day **Federal Register** notice published on November 23, 2012 (77 FR 70163). We received two comments. The comments concerned issuer burden associated with the data collection and the content of the data submission. These comments were addressed in full in the Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule. Generally, we noted that this data collection pertained to the submission of data from accrediting entities seeking to be recognized and accrediting entities already recognized, rather than issuers. Comments related to the content of the data submission were deemed out of scope. *Form Number:* CMS–10449; *Frequency:* Monthly, Occasionally; *Affected Public:* Private sector, Not-for-profit institutions; *Number of Respondents:* 4; *Number of Responses:* 60; *Total Annual Hours:* 3,544. (For policy questions regarding this collection contact Rebecca Zimmermann at (301) 492–4396. 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 15, 2013:* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: March 8, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–05802 Filed 3–13–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Joint Meeting of the Advisory Committee for Reproductive Health Drugs and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Advisory Committee for Reproductive Health Drugs and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 18, 2013, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm*; under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *ACRHD@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously

announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the efficacy and safety of new drug application (NDA) 22219, AVEED (testosterone undecanoate) intramuscular injection, submitted by Endo Pharmaceutical Solutions, Inc., for the proposed indication of replacement therapy in adult males for conditions associated with a deficiency or absence of testosterone. The safety discussion will focus on postmarketing reports of oil embolism in the lungs and potential anaphylactic reactions. In addition to AVEED, other approved testosterone injectable products will be referenced, especially in regard to oil embolism and potential anaphylactic reactions reported for those products.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 4, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 27, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 28, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 8, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–05861 Filed 3–13–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals 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 or the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Provocative Questions.

Date: March 28, 2013.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Peter J. Wirth, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328 301–496–7565 *pw2q@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Nanotechnology RNA Therapeutics.

Date: April 18–19, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, *vollbert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05847 Filed 3–13–13; 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; Neurological disorders.

Date: March 22, 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: Samuel C. Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@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: March 8, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05849 Filed 3–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Identification, Referral, and Follow-up of Patients who have HTLV.

Date: March 20, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kirt Vener, Ph.D., Branch Chief, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8061, Bethesda, MD 20892–8329, 301–496–7174, *venerk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05845 Filed 3–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel.

Date: April 1, 2013.

Time: 12:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20814, (Telephone conference call).

Contact Person: Ramesh Vemuri, Ph.D., Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700 *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05842 Filed 3–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 28, 2013, 8:00 a.m. to March 28, 2013, 5:00 p.m., National Institutes of Health, 6116 Executive Boulevard, Room 507, Rockville, MD, 20852 which was published in the **Federal Register** on March 04, 2013, 78FR14099.

This notice is being amended to change the start time from 8:00 a.m. to 1:00 p.m. on March 28, 2013. The meeting is closed to the public.

Dated: March 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05846 Filed 3–13–13; 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 Member Conflict: Cardiovascular Clinical and Translational Studies

Date: April 4, 2013.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: 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: March 8, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05850 Filed 3–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SBIR Pediatric Vascular Stents.

Date: April 4, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05843 Filed 3–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: April 23–24, 2013.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: Challenges of Global HPV Vaccination.

Place: Hilton Miami Downtown, 1601 Biscayne Boulevard, Miami, FL 33132.

Contact Person: Abby B. Sandler, Ph.D., Executive Secretary, President's Cancer Panel, Special Assistant to the Director, NCI Center for Cancer Research, 9000 Rockville Pike, Building 31, Room B2B37, MSC 2590, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page:*http://deainfo.nci.nih.gov/advisory/pcp/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05848 Filed 3–13–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: May 2–3, 2013.

Time: 8:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gail J. Bryant, MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8107, MSC 8328, Bethesda, MD 20892–8328, (301) 402–0801, *gb30t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05844 Filed 3–13–13; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Extension of the Duration of Programmatic Agreements Based on the Department of Energy Prototype Programmatic Agreement for Its Weatherization Assistance Program, State Energy Program, and Energy Efficiency and Conservation Block Grant; Notice of Program Comment

AGENCY: Advisory Council on Historic Preservation.

ACTION: The Advisory Council on Historic Preservation has issued a Program Comment for Extending the Duration of Programmatic Agreements based on the Department of Energy Prototype Programmatic Agreement for its Weatherization Assistance Program, State Energy Program, and Energy Efficiency and Conservation Block Grant.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) issued a Program Comment at the request of the U.S. Department of Energy that allows its program of tailored compliance with Section 106 of the National Historic Preservation Act to continue under the prototype Programmatic Agreement (PA) for the Office of Weatherization and Intergovernmental Programs Weatherization Related Grant Programs: Weatherization Assistance Program (WAP), State Energy Program (SEP), and Energy Efficiency and Conservation Block Grant (EECBG).

DATES: The Program Comment was issued by the ACHP on March 11, 2013.

ADDRESSES: Address all comments concerning the Program Comment to Lee Webb, Liaison to the Department of Energy, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Suite 803, Washington, DC 20004. You may also submit comments via fax at (202) 606–8647 or via electronic mail at *lwebb@achp.gov*.

FOR FURTHER INFORMATION CONTACT: Lee Webb, (202) 606–8583, *lwebb@achp.gov*.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their undertakings on historic properties and to provide the ACHP a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of those undertakings by taking into account the ACHP's Program Comment and following the steps set forth in that comment.

I. Background

The ACHP has issued a Program Comment to the U.S. Department of Energy (DOE) to extend the duration of agreements based on the DOE prototype PA for its WAP, SEP, and EECBG programs. The ACHP membership voted in favor of issuing the Program Comment via an unassembled vote that concluded on March 11, 2013.

The Program Comment extends the duration of the existing 44 agreements executed under the prototype PA until December 31, 2020, and provides the same duration period for any future agreements that may be executed under the prototype PA. Nothing in the Program Comment alters or modifies any other provisions of the prototype PA or the 44 agreements, including the ability of the parties to amend or terminate an executed agreement prior to the expiration date.

According to the requirements for obtaining a Program Comment, the DOE formally requested the ACHP comment on its continuing use of the prototype PA to tailor its Section 106 compliance for undertakings funded by WAP, SEP, and EECBG in each state in lieu of renegotiating and amending each executed agreement. The prototype PA provided a suggested duration clause of three years for each agreement from the date of final signature and filing with ACHP. As a result, DOE currently has 44 executed agreements based on the prototype PA, with various expiration dates dependent on their respective dates of execution. The first PAs will start expiring in mid-March of 2013 and, with these first expiration dates fast approaching, there is an immediate need to extend the expiration date of the PAs developed under the prototype PA. The use of the Program Comment to achieve this goal avoids the need to negotiate extensions to each of the 44 individual agreements. The ACHP has concluded that the use of a Program Comment to achieve this goal is the most efficient mechanism for doing so and the most expedient way to ensure that these successful agreements remain in force.

The Program Comment does not restrict the use and application of the prototype PA in states where they have not yet been developed by allowing any new agreements developed under the prototype to extend to 2020. This provides continuity in the Section 106 review for those undertakings covered by existing agreements and any new agreements executed under the prototype PA. By extending the duration of these agreements, the Program Comment provides the DOE, SHPOs, and state agency recipients with the option to continue operating under the prototype PA and the subsequently executed agreements. However, any party may amend or terminate an agreement in accordance with the amendment and termination provisions prior to December 31, 2020.

The ACHP received DOE's request for the Program Comment on January 31, 2013, and took steps to inform the public and stakeholders about the proposed Program Comment. Prior to receiving the formal request from DOE, ACHP hosted, with DOE's participation, listening sessions for State Historic Preservation Officers (SHPOs) to discuss the upcoming expiration of the agreements executed under the prototype PA and the possibility of developing a new program alternative. The ACHP and DOE then coordinated to develop the text of the Program Comment. The ACHP published a notice of the proposed Program Comment in the **Federal Register** on February 22, 2013, for a one-week comment period (78 FR 12336–12337).

In accordance with 36 CFR 800.14(e), the ACHP is responsible for obtaining the views of SHPOs and Tribal Historic Preservation Officers (THPOs) before reaching a decision on issuing a Program Comment. On February 22, 2013, the ACHP notified SHPOs and the Section 106 contacts for Indian tribes and Native Hawaiian organizations of the proposed Program Comment via electronic mail and asked for their review and comment. The DOE provided the draft Program Comment and brief background narrative to its state agency recipients for their review and comment. All comments on the draft Program Comment from SHPOs, THPOs, Indian tribes, Native Hawaiian organizations, DOE state agency recipients, and members of the public were due to ACHP staff on March 1, 2013.

Various substantive comments from stakeholders and the public were received and considered by the ACHP, as noted below. The majority of comments received were in support of

the Program Comment and did not require any revisions to the draft.

Two SHPO comments asked for clarification as to whether the Program Comment would apply to state level interagency agreements that were developed prior to the prototype PA. Under Stipulation III of the prototype PA, DOE can choose to recognize an interagency agreement if the agreement closely resembled the prototype PA in establishing review efficiencies and providing exemptions from review for routine activities. To recognize such an agreement under the prototype PA, DOE, the SHPO and the state agency receiving DOE funds would sign a cover agreement. In response to these comments, the Program Comment was revised to clarify that it would be applicable to agreements recognized via cover agreement under Stipulation III of the prototype PA.

Another SHPO comment asked for clarification as to whether the signatories on the executed PAs (DOE, SHPOs, and state agency recipients) were required to take any additional action to extend the PA, once the Program Comment was issued. To address this comment, the Program Comment was revised to include language that stated, ''by the issuance of the Program Comment,'' the PAs based on the DOE prototype PA could extend through December 31, 2020. The ACHP and DOE will send follow-up guidance to the stakeholders as needed to clarify the Program Comment's applicability and use.

Another comment asked for clarification about how the prototype PA itself was developed and implemented and whether there was any tribal involvement in DOE projects in Washington and Oregon. The ACHP is preparing a written response to this commenter to explain the development of the prototype PA, and is coordinating with DOE to provide the additional information as requested. No revisions were made to the Program Comment as a result of this comment.

The remaining comments from state agencies and SHPOs expressed support for the Program Comment and did not require any revisions to the draft text.

II. Final Text of the Program Comment

The following is the text of the issued Program Comment:

Program Comment To Extend the Duration of Agreements Executed Under the Department of Energy's Prototype Programmatic Agreement

I. Introduction

The Department of Energy's (DOE) Office of Weatherization and Intergovernmental Programs (OWIP) provides financial assistance to state agency applicants for three weatherization related grant programs: Weatherization Assistance Program (WAP), State Energy Program (SEP), and Energy Efficiency and Conservation Block Grant (EECBG). DOE has determined that activities carried out by these funded programs constitute undertakings with the potential to affect historic properties. Therefore, DOE must comply with Section 106 and its implementing regulations, 36 CFR Part 800, for these undertakings.

The Advisory Council on Historic Preservation (ACHP) and DOE began a partnership in August 2009 to explore possible program alternatives to tailor the Section 106 process for these undertakings in anticipation of the dramatic increase in project funding as a result of American Recovery and Reinvestment Act. DOE, in consultation with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO), developed a prototype Programmatic Agreement (PA) to cover three weatherization related grant programs and to create efficiencies in the administration of these OWIP grants: WAP, SEP, and EECBG. The prototype PA identifies a category of routine undertakings with limited potential to affect historic properties and exempts them from further review. The ACHP's Chairman designated the prototype PA on February 8, 2010. Under the terms of the prototype PA, DOE, the State Historic Preservation Officer (SHPO), and the relevant state agency receiving OWIP grants can execute subsequent agreements without ACHP involvement. Execution of an agreement pursuant to the prototype PA presumes that DOE will conduct its government-to-government consultation responsibilities with federal recognized Indian tribes and its Section 106 consultation requirements with Native Hawaiian organizations. If DOE is notified that a particular undertaking may result in an adverse effect on historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations, DOE must invite such Indian tribes or Native Hawaiian organizations to participate in consultation for the affected project.

Since its designation, DOE has used the prototype PA to successfully negotiate and execute 44 programmatic agreements with SHPOs and state agencies receiving DOE OWIP grants. DOE's direct recipients may use the executed state agreement developed under the prototype PA as well. The prototype PA initially proposed a three year duration clause from the time of execution and filing with the ACHP. As a result, the 44 agreements executed under the prototype PA have different expiration dates. Several of the agreements will expire in mid-March 2013. It is now DOE's and the ACHP's intention that these agreements should extend beyond the three year term.

II. Background

During the development of the prototype PA in 2009, the ACHP invited SHPOs, Indian tribes, and Native Hawaiian organizations to participate in a series of teleconferences to discuss the prototype PA and share information on which DOE programs would be covered by the new program alternative. The tribes that participated in the teleconferences noted that the vast majority of funding from the three programs did not relate to undertakings on or affecting historic properties on tribal lands, and were not interested in participating further in the process to develop the prototype PA. The SHPOs were generally supportive of DOE's intent to pursue a program alternative such as the prototype PA that would assist them in managing their workload by streamlining the review of certain undertakings. Further, the SHPOs liked the format of the prototype PA as they would be able to modify individual agreements under its terms to account for state-specific issues.

As a result of the partnership with ACHP and the development and the administration of the prototype PA, DOE established internal and external training; recognized best management practices; and utilized DOE guidance and directives to ensure that the DOE weatherization programs were properly implemented in compliance with Section 106. The prototype PA established review efficiencies and protocols which allowed for the grant programs to expedite the weatherization efforts of the homes of many low income individuals across the country, as well as assisted communities in funding energy efficiency, renewable energy, and weatherization projects for public buildings such as schools and courthouses. Due to the success of the prototype PA for DOE's weatherization programs, other departments within DOE have sought ACHP's and OWIP staff's guidance and direction for meeting their historic preservation compliance responsibilities.

In the past year, DOE and the ACHP have discussed how to extend and build upon the program established by the prototype PA. In December 2012, DOE and the ACHP held listening sessions with SHPOs. The discussions focused

on the effectiveness of the prototype PA and the feasibility of pursuing a new program alternative. The SHPOs that participated in those listening sessions were generally supportive of the development, implementation, and effectiveness of the prototype PA and expressed a preference to continue using the PAs to provide streamlining of reviews and other review efficiencies. Further, in developing the text of this Program Comment, the ACHP provided an opportunity for SHPOs, Indian tribes, Native Hawaiian organizations, and state agencies to comment on its applicability and terms.

This Program Comment extends the duration of the existing 44 agreements executed under the prototype PA until December 31, 2020, and provides the same duration period for any future agreements that may be executed under the prototype PA. Nothing in this Program Comment alters or modifies any other provisions of the prototype PA or the 44 agreements, including the ability of the parties to amend or terminate an executed agreement prior to the expiration date.

III. Establishment and Authority

This Program Comment was issued by the ACHP on March 11, 2013 pursuant to 36 CFR 800.14(e).

IV. Date of Effect

This Program Comment went into effect on March 11, 2013.

V. Use of This Program Comment To Extend the Duration of the Existing Agreements Executed Under the DOE Prototype PA and for New Agreements Executed Pursuant to the Prototype PA

By the issuance of this Program Comment, the DOE may continue, through December 31, 2020, complying with its responsibilities under Section 106 of the National Historic Preservation Act for its WAP, SEP, and EECBG in the relevant States using the 44 agreements currently executed, including those agreements that were recognized by Stipulation III, and those to be executed, under the ''Prototype Programmatic Agreement between the United States Department of Energy, the State Energy Office and the State Historic Preservation Office regarding EECBG, SEP and WAP Undertakings,'' designated by the ACHP on February 8, 2010, regardless of the duration clause of those agreements. However, if any of those agreements is terminated under its own terms, DOE may no longer use it to comply with its Section 106 responsibilities in the relevant State. This will provide continuity in the Section 106 review for those undertakings covered by the existing and any new agreements executed under the prototype PA. This Program Comment does not alter or modify any provisions of the prototype PA or the 44 executed agreements other than their duration clauses.

VI. Amendment

The ACHP may amend this Program Comment after consulting with DOE, NCSHPO, and other parties as appropriate, and publishing notice in the **Federal Register** to that effect.

VII. Sunset Clause

This Program Comment will terminate on December 31, 2020, unless it is amended to extend the period in which it is in effect.

VIII. Termination

The ACHP may terminate this Program Comment by publication of a notice in the **Federal Register** thirty (30) days before the termination takes effect.

Authority: 36 CFR 800.14(e).

Dated: March 11, 2013.

John M. Fowler,

Executive Director.

[FR Doc. 2013–05917 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–23]

Notice of Submission of Proposed Information Collection to OMB: Low Income Housing Tax Credit Database

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

Section 2835(d) of the Housing and Economic Recovery Act, or HERA, (Pub. L. 110–289, approved July 30, 2008) amends Title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act) to add a new section 36 (to be codified as 42 U.S.C. 1437z–8) that requires each state agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (low-income housing tax credits or LIHTC) to furnish HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the U.S. Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. New section 36 requires HUD to establish standards and definitions for the information to be collected by state agencies and to provide states with technical assistance in establishing systems to compile and submit such information and, in coordination with other federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs. In 2010, OMB approved the first collection instrument used for the collection of LIHTC household information (OMB Approval No. 2528–0165, expiration date 05/31/2013). HUD used the previously approved form to collect data on LIHTC tenants in 2009, 2010 and 2011. Renewal of this form is required for HUD to remain in compliance with the statute.

DATES: *Comments Due Date: April 15, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0165) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Low Income Housing Tax Credit Database.

OMB Approval Number: 2528–0165.

Form Numbers: None.

Description of the need for the information and proposed use: Section 2835(d) of the Housing and Economic Recovery Act, or HERA, (Pub. L. 110–289, approved July 30, 2008) amends Title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act) to add a new section 36 (to be codified as 42 U.S.C. 1437z-8) that requires each state agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (low-income housing tax credits or LIHTC) to furnish HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the U.S. Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. New section 36 requires HUD to establish standards and definitions for the information to be collected by state agencies and to provide states with technical assistance in establishing systems to compile and submit such information and, in coordination with other federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs. In 2010, OMB approved the first collection instrument used for the collection of LIHTC household information (OMB Approval No. 2528–0165, expiration date 05/31/2013). HUD used the previously approved form to collect data on LIHTC tenants in 2009, 2010 and 2011. Renewal of this form is required for HUD to remain in compliance with the statute.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	60	1		48		2,880

Total Estimated Burden Hours: 2,880.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05828 Filed 3–13–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–22]

Notice of Submission of Proposed Information Collection to OMB Family Report, Moving-To-Work Family Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

HUD's Office of Public and Indian Housing (PIH) provides funding to Public Housing Agencies (PHAs) to administer assisted housing programs. Form HUD–50058 MTW Family Reports solicit demographic, family profile, income and housing information on the entire nationwide population of tenants residing in assisted housing. The information collected through the Form HUD–50058 MTW will be used to monitor and evaluate the Office of PIH's MTW Demonstration program which includes Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates and Vouchers, Section 8 Moderate Rehabilitation and MTW Demonstration programs.

DATES: *Comments Due Date:* April 15, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0083) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Family Report, MTW Family Report.

OMB Approval Number: 2577–0083.

Form Numbers: HUD 50058 MTW.

Description of the need for the information and proposed use:

The Office of Public and Indian Housing of the Department of Housing and Urban Development (HUD) provides funding to Public Housing Agencies (PHAs) to administer assisted housing programs. Form HUD–50058 MTW Family Reports solicit demographic, family profile, income and housing information on the entire nationwide population of tenants residing in assisted housing. The information collected through the Form HUD–50058 MTW will be used to monitor and evaluate the Office of

Public and Indian Housing, MTW Demonstration program which includes Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates and Vouchers, Section 8 Moderate Rehabilitation and MTW Demonstration programs.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden:	4,149	692.92		0.376	1,081,685

Total Estimated Burden Hours: 1,081,685.

Status: This is a revision of an existing collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *March 5, 2013.*

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05817 Filed 3–13–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5623–N–03]

HUD Healthcare Facility Documents: Notice Announcing Final Approved Documents and Assignment of OMB Control Number

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the healthcare facility documents have completed the notice and comment processes and review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act, and that OMB has assigned a control number to the documents. The final versions of the documents can be found on HUD's Web site at *www.hud.gov/232forms.* Additionally, this notice highlights some of the changes made by HUD to the documents based upon its review of the comments submitted in response to a November 21, 2012 notice.

FOR FURTHER INFORMATION CONTACT: Roger Miller, Deputy Assistant Secretary, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6264, Washington, DC 20410–0500; telephone number 202–708–0599 (this is not a toll-free number). Persons with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 3, 2012 (77 FR 26304) and consistent with the Paperwork Reduction Act of 1995 (PRA), HUD published for public comment, for a period of 60 days, a notice (60-day Notice) advising that HUD was updating and revising a set of production, underwriting, asset management, closing, and other documents used in connection with transactions involving healthcare facilities, excluding hospitals, that are insured pursuant to section 232 of the National Housing Act (Section 232). These documents are referred to collectively as the healthcare facility documents. The 60-day Notice followed adoption of updates and revisions to documents used for FHA's multifamily programs, and initiated the public review process for obtaining approval of changes to these specific healthcare facility documents under the PRA. In conjunction with publication of the 60-day Notice, the proposed revised healthcare facility documents were made available at: *www.hud.gov/232forms.*

Along with the 60-day Notice, HUD also published on May 3, 2012, at 77 FR 26218, a proposed rule that proposed to strengthen regulations for HUD's Section 232 program to reflect current policy and practices, and to improve accountability and strengthen risk management. A final rule following the May 3, 2012, proposed rule, and taking into consideration public comment received on the proposed rule, was published on September 7, 2012, at 77 FR 55120 (2012 Final 232 Rule).

As a special outreach to the public on proposed changes to the Section 232 program regulations, HUD hosted a forum, the ''Section 232 Document and Proposed Rule Forum'' on May 31, 2012, in Washington, DC. A video of this forum is available on the HUD Web site at *http://portal.hud.gov/hudportal/HUD?src=/press/multimedia/videos.* While comments were raised and discussed at the forum, as reflected in the video, HUD encouraged forum participants to file written comments through the *www.regulations.gov* Web site so that all comments would be more easily accessible to interested parties. All comments, whether submitted through *www.regulations.gov* or raised at the forum, were considered in the development of the revised documents which were published on November 21, 2012 (77 FR 69870), and for which, consistent with the PRA, comment was solicited for an additional 30 days.

In the 30-day PRA notice published on November 21, 2012 (77 FR 69870) (30-day Notice) HUD identified substantive changes that were made to the healthcare facility documents in response to public comments submitted on the 60-day Notice, responded to significant issues raised by the commenters, and identified proposed additional changes based on further consideration of certain issues. All the public comments submitted on the proposed updated documents were available for review on *www.regulations.gov*, and a HUD web page included proposed mark-ups of the documents. The documents can be found on HUD's Web site at: *www.hud.gov/232forms.*

This notice published today announces that HUD has completed the notice and comment processes required by the PRA, and that OMB has completed its review and has assigned an OMB control number 2502–0605 to the documents. HUD made additional changes to the documents in response to comments submitted on the 30-day Notice. Therefore, in addition to announcing the completion of the process required by the PRA and the assignment of the OMB control number, HUD highlights some of the additional changes made to the healthcare facility documents (documents) in response to public comment as provided below.

II. Status of Changes to Documents

In response to comments that were received on the 60-day Notice and the 30-day Notice, HUD made a number of revisions to the documents. The changes to these documents include both technical editorial changes and some more substantive changes.

This notice does not provide a detailed summary of all of the changes made or responses to all of the issues raised in the final set of public comments on the 30-day Notice. Rather, the discussion in the following sections

of this notice highlights certain changes which are representative of the types of changes made in response to some of the more significant issues raised by the commenters in response to the 30-day Notice and the accompanying documents posted on HUD's Web site. In this notice, HUD is not repeating responses to all the proposed changes or issues that were addressed in the prior notices. The final versions of the documents and the redlined versions which detail specific changes to the documents posted in connection with the 30-day Notice are available on HUD's Web site: *www.hud.gov/232forms.*

Please also note that commenters have varied their references to specific provisions in the documents; sometimes the commenters referred to the provision in the healthcare facility document as sections, subsections, and paragraphs. Efforts have been made to track and maintain those references in this notice.

III. Selected Policy Determinations

Some of the changes suggested to the documents by the commenters on the 30-day Notice were similar to changes suggested by commenters on the 60-day Notice, and were already addressed by HUD in the 30-day Notice. Further, the redlined and final documents posted on HUD's Web site in conjunction with this final notice detail all of the changes HUD made in response to the points made by the commenters. Therefore the changes discussed below highlight, in a comment and response format, a summary of areas where HUD has made significant policy or other substantive determinations.

IV. The Public Comments

A. The Commenters

The public comment period for the 30-day Notice closed on December 21, 2012, and public comments were received from 5 sets of commenters (some individuals, some a group of individuals, each set referred to in this notice as a ''commenter''). Comments were submitted by associations representing surety bond insurance companies, mortgage bankers, accounts receivable (AR) lenders, lenders specializing in HUD programs, and private practice attorneys.

All comments were carefully considered by HUD prior to presentation to OMB for final approval and assignment of a control number under the Paperwork Reduction Act.

B. General Recommendations

This section of the summary includes summaries of ''cross-cutting'' issues that were emphasized in commenters' summaries.

Comment: Treatment of Non-Profit Borrowers. One comment stated that HUD is deviating from long-standing HUD policy with respect to non-profit borrowers, and recommended that HUD reconsider revising provisions in the Healthcare Regulatory Agreement—Borrower (''Borrower's Regulatory Agreement'') regarding non-profit borrowers. The commenter stated that under the proposed Borrower's Regulatory Agreement, all non-profit borrowers will be required to maintain a residual receipts account that essentially amounts to a long-term debt service escrow merely because they are non-profit entities. The commenter stated that such a requirement should be waived if in all other respects, the non-profit is being treated the same as a for-profit borrower, not benefiting at all from its non-profit status. The commenter stated that it is counter to HUD's mission for HUD to treat non-profit borrowers disadvantageously solely because they are non-profit entities.

HUD Response: The commenter is not correct that the proposed Borrower's Regulatory Agreement deviates from long-standing HUD policy. It is well-established, long-standing HUD policy in both the healthcare and multifamily programs to require non-profit borrowers to maintain residual receipts accounts rather than allowing non-profit borrowers to make distributions of surplus cash. Although the policy for healthcare program transactions is different than the policy for multifamily program transactions, it is also long-standing HUD policy for both programs to provide some limits, waivers and exceptions to this general policy. The commenter's concerns relate to these limits, waivers and exceptions. In the healthcare program, the extent of and the conditions required for these limits, waivers, and exceptions has been evolving for many years. The healthcare program policy regarding non-profits documented in the proposed Borrower's Regulatory Agreement had been widely used prior to the publication of the 30-day Notice, but had also been frequently waived or modified, as may have been negotiated on a deal-specific basis. The proposed provisions in the Borrower's Regulatory Agreement attempted to document and standardize this policy nationwide and program-wide. Upon consideration of the commenter's comments, HUD has further clarified these provisions. For example, HUD has provided instruction in the document that where a non-profit borrower is seeking to re-finance HUD-insured debt under Section 223(a)(7), and the non-profit borrower's current regulatory agreement identifies the borrower as a for-profit borrower, HUD will continue to identify the borrower as a for-profit borrower for purposes of the borrower's regulatory agreement.

Comment: HUD should differentiate between Affiliated and Unaffiliated Operators. A commenter stated that HUD must differentiate between operators who have an ''identity of interest'' with the HUD borrower (an ''affiliated operator'') and operators who have no identity of interest with the HUD borrower (an ''unaffiliated operator''). The commenter stated that a non-affiliated operator will be extraordinarily reluctant to follow HUD's requirements as set forth in the documents, as typically, an unaffiliated operator would have little, if any, incentive to subject itself and its assets to its landlord's loan liabilities. The commenter stated that these issues would be most pronounced for the unaffiliated operators in the security agreements required of the master tenant and of the operator, the master tenant's and operator's regulatory agreements, and the Subordination, Non-Disturbance and Attornment Agreement (SNDA). The commenter recommended that FHA create a separate set of these and other form documents for unaffiliated operators.

HUD Response: HUD has considered these comments carefully, but as a policy matter at this time has decided generally to not differentiate between affiliated and unaffiliated operators. HUD has determined that the policies regarding operators in the documents reflect reasonable and sound business practices, and reasonable and necessary oversight, regardless of the affiliation, if any, between the operator and the borrower. HUD believes that most operators (whether or not affiliated with the borrower), upon careful consideration, will find the provisions reasonable, but HUD also recognizes that some unaffiliated operators may not agree with this policy choice and may choose not to participate in HUD programs as a result. However, HUD has determined that, at this time, the need to establish clearer and more direct oversight over operators outweighs this potential effect. HUD also notes that, to limit decreases in unaffiliated operator participation, unaffiliated operators have been given greater rights than affiliated operators through the SNDA, as demonstrated in the SNDA published in connection with the 30-day Notice.

Comment: Security of Obligations. Multiple commenters stated that, in various documents, the obligations

secured by pledges of the operator and/or the master tenant should be limited to direct obligations of the operator and/or master tenant under documents to which each is a party, respectively, rather than the borrower's obligations under the Loan Documents.

HUD Response: HUD disagrees. HUD's approach to the healthcare programs is and has always been holistic, to oversee and assess the entire project, not merely to provide mortgage insurance for a real estate transaction. HUD has a strong interest in the viable operation of the healthcare facility and regards all funds derived from the operation of the healthcare facility as project funds, pursuant to 24 CFR 232.1005.

Comment: Project Operating Deficiencies must be revised and must not be deemed ''Events of Default''. A commenter stated that HUD should revise its definition of ''project operating deficiencies'' in various documents, including regulatory agreements and the SNDA, and that HUD should clarify that project operating deficiencies shall not be deemed an ''event of default'' under those documents. The commenter also stated that operators have already objected to the ''project operating deficiencies'' provisions included in the SNDA form currently in use, and that well-established operators will be unwilling to subject themselves to these provisions only to cooperate with their landlords in obtaining HUD-insured financing. The commenter stated that this is the case for both affiliated and unaffiliated operators. The commenter stated that there should be no subjective determinants of what constitutes a project operating deficiency and that the occurrence of a project operating deficiency should not constitute an event of default entitling HUD or the lender to terminate an operator's lease or replace the operator. The commenter recommended that HUD allow an operator that is otherwise paying rent under the lease, for so long as there is no material risk of termination of the operator's necessary permits and approvals, to continue to operate and address its problems.

HUD Response: HUD agrees with the commenter in part and disagrees in part. HUD agrees that the criteria for what constitutes a project operating deficiency should not be subjective, and has determined that the criteria are objective, fair, and reasonable. HUD also agrees that the purpose of recognizing a project operating deficiency is to identify a struggling project before the project fails and an event of default is declared, and to consider the use of a consultant as one *potential* tool to avert an event of default. Therefore, HUD agrees that the occurrence of a project operating deficiency, in and of itself, does not constitute an event of default and believes nothing in the documents indicates otherwise. Moreover, HUD notes that, as a mortgage insurer, HUD's incentives are not aligned with calling a default on either the operator or the borrower when doing so could prompt an otherwise avoidable claim.

Comment: Revise Timeframes for Cure Rights and Cure Periods. A commenter recommended that HUD allow reasonable timeframes for curing events of default under the documents. The commenter stated that where a borrower or operator is granted a 30-day cure period, as a matter of course, that 30-day cure period should be extended so long as the defaulting party commences to cure within 30 days and diligently pursues the cure to completion. The commenter stated that a limitation on that extended cure period during material risks of termination of necessary permits and approvals or payment defaults, however, is reasonable.

HUD Response: HUD has carefully considered this comment and has determined that, although most cure period provisions set forth in the documents are appropriate and include extensions where appropriate, the cure period in the operator's security agreement should include an extension similar to the cure period in the operator's regulatory agreement, and has revised the document to include such extension.

Comment: Make the Lender a Third-Party Beneficiary to the Regulatory Agreements. A commenter stated that the FHA lender should be a third-party beneficiary of borrowers', master tenants', and operators' obligations under their respective regulatory agreements. The commenter stated that the lender's ability to exercise HUD's rights in those documents benefits HUD because it gives the lender an alternative recovery source other than assigning the loan to HUD.

HUD Response: HUD has determined that it is not appropriate for the lender to be a third-party beneficiary to the regulatory agreements. The lender's rights with respect to the borrower are set forth in the other loan documents and the lender has adequate ability pursuant to the loan documents to pursue the borrower for violations of its covenants and of program obligations.

Comment: Regulatory Agreement Defaults should be Defaults under the Security Agreements. A commenter stated that any default of either the regulatory agreements should result in a default of the respective security agreement or security instrument, without the separate need for HUD consent to such treatment. The commenter stated that this revision would provide lenders with increased ability to remedy defaults without assigning loans to HUD.

HUD Response: Consistent with the determinations HUD made with regard to the multifamily program, HUD has determined that defaults of the regulatory agreements should not constitute defaults under the other loan documents without HUD's consent. While the other loan documents set forth the lenders' rights with respect to the borrower, the regulatory agreement is a HUD-driven document. Contrary to the commenter's assertions, HUD has determined that allowing the lender to call an event of default under the other loan documents for regulatory agreement defaults without HUD consent increases and facilitates the lenders' ability to assign the defaulting loan to HUD, increasing HUD's risk and exposure.

C. Document Specific Comments

This section of the summary contains the comments related to specific documents.

Lender Narratives

A commenter made several comments to the Lender Narratives to clarify requirements and refine the questions. Changes made in response to these comments can be seen in the published redlined versions of the documents.

Production Certifications—Consolidated Certifications

Comment: Allow Electronic Filing of Form 2530. A commenter suggested that the consolidated certification forms be revised to allow for electronic filing of HUD Form 2530 Previous Participation Certificates, instead of requiring paper submissions.

HUD Response: HUD agrees and has revised the language in the consolidated certifications to better clarify that where electronic submissions have been made, paper filings are not required.

Performance Bond—Dual Obligee (HUD 92452–ORCF)

Payment Bond (HUD 92452–ORCF)

Offsite Bond: Dual Obligee (HUD 92479–ORCF)

Comment: Cap automatic increases of the penal sum. A commenter stated that Paragraph 3 of the Performance Bond states that the obligation of the obligors is increased by any approved increase in

the contract price, but that this provision is problematic if it refers to increases of the penal sum, or penalty amount, of the bond. Namely, the commenter stated concern that Federal regulations limit the risk a surety insurer can accept on a single bond written to the federal government, after crediting reinsurance and collateral, to 10% of its policy holder surplus (31 CFR 223.10 Limitation of risk). The commenter stated that if HUD desires that the penal sum be increased commensurate with change orders, automatic increases should be capped. The commenter stated that the form could include, for example, a provision that permits an increase of the penal sum, without consent of the surety, to account for an aggregate increase of 15% of the original contract price. The commenter stated that increases above this threshold would require surety consent.

HUD Response: HUD has reviewed these provisions and has found them to be in compliance with all applicable regulations. HUD notes that these provisions are the same as those currently in effect in the multifamily program and that their inclusion has not proven problematic in the multifamily program context.

Addendum to Operating Lease (HUD–91116–ORCF)

Comment: Make Operating Lease Addendum Consistent with Master Lease Addendum. The commenter suggested adding several provisions similar to provisions in the addendum to the master lease, as also being appropriate for this lease addendum.

HUD Response: HUD agrees in part and has revised the document accordingly.

Healthcare Facility Note (HUD 94001–ORCF)

Comment: Revise the Late Charge Requirements. The commenter stated that although 24 CFR 200.88 was revised in 2011 to change the time for assessing late charges from 15 days to 10 days for multifamily housing, the change does not apply to mortgages insured under section 232. Since the 2012 Final 232 Rule did not address late charges, pursuant to 24 CFR 200.88(a)(2), late charges may be assessed on section 232 mortgages only if a payment is more than 15 days in arrears.

HUD Response: HUD agrees. It is HUD's intention to maintain the 15 day time frame for section 232 transactions and the note has been revised accordingly.

Healthcare Regulatory Agreement—Borrower (HUD 92466–ORCF)

Comment: Distributions Provisions Should Limit Obligation to Restore Negative Surplus Cash. With respect to section 16(d), a commenter recommended that the obligation to restore a negative surplus cash situation be limited to the amount required to eliminate the deficiency (e.g., if $100.00 is distributed and a $1.00 negative surplus cash position results, then a $1.00 payment should rectify the situation).

HUD Response: HUD agrees with the comment, but has determined that the language in the document already limits such required restoration to the extent that surplus cash is negative and no revision to the document is necessary.

Comment: Eliminate HUD's ability to Mandate a Different Operator. A commenter recommended that section 26(d) be revised by deleting the sub-clause that entitles HUD to mandate a different operator if HUD determines ''the financial viability of the Healthcare Facility is in substantial and imminent risk.'' The commenter stated that this is a subjective determination and should be deleted. The commenter stated that if the borrower is paying its loan obligations, and the permits and approvals are not at material risk, then the borrower's rights to continue to operate the project should continue.

HUD Response: HUD disagrees with the commenter and has determined that appropriate oversight requires the ability to take action if the project is in substantial and imminent financial risk, even if the borrower or its affiliates are able to continue making loan payments at such time.

Comment: Permit Operator to Purchase a Facility. A commenter objected to section 26(e) of the operator's regulatory agreement and suggested that there may be circumstances where HUD may consent to the operator's purchase of a facility. The commenter stated that this could be an important inducement for an operator to take over a struggling facility.

HUD Response: HUD agrees that there may be circumstances where it is appropriate to allow the operator to purchase the facility. Nothing in the regulatory agreement prohibits this kind of transfer, with HUD's consent. HUD notes, however, that according to the Financial Accounting Standards Board (FASB) certain provisions in a lease may cause the lease to be classified as a ''capital lease'' which has undesirable accounting consequences. HUD has revised section 26(e) to address the commenter's concerns.

Healthcare Regulatory Agreement—Operator (HUD 92466A)

Comment: Termination of Minor Permits Should Not Trigger a Project Operating Deficiency. The commenter stated that the termination of a permit not needed to operate a project (e.g., loss of a curb cut permit where there are other acceptable access points) should not be treated as a Project Operating Deficiency pursuant to section 6(a) of the operator's regulatory agreement.

HUD Response: HUD agrees with the commenter's concern and notes the document uses a defined term when referring to ''permits and approvals.'' The defined term ''permits and approvals'' is used in the project operating deficiencies provisions and other provisions referring to ''permits and approvals.'' The defined term is already limited to include only those permits and approvals reasonably necessary to operate or fund operation of the healthcare facility, so further limitation is not necessary.

HUD also notes that in reviewing the commenter's concerns regarding permits and approvals, HUD determined that the provisions requiring operators to provide notice to HUD and lender if the Project is or may be in violation of any of the permits and approvals or any governmental requirements applicable to the operation of the Healthcare Facility were too broad and required clarification. HUD has revised these provisions in the operator's regulatory agreement, the borrower's regulatory agreement, and the management certification. The revisions are shown in the redlined drafts of these documents posted on HUD's Web site.

Comment: Audited Financials Should be Required Only in an Event of Default. A commenter stated that section 20 should be revised to limit HUD's ability to require audited financials at the operator's expense only in an event of default.

HUD Response: HUD disagrees and has determined that, given the other oversight provisions in the documents, proper oversight of operators does not require audited financials in the normal course, but that, as the document reflects, if HUD has reason to believe that an operator's self-certified financial statements are unreliable or otherwise not compliant with program obligations, proper oversight does require HUD to request audited financial statements.

Comment: Revise the Definition of Healthcare Facility Working Capital. The commenter suggested revising the definition of healthcare facility working

capital. The commenter stated that under Generally Accepted Accounting Principles (GAAP), the portion of the principal of any loan that is due within one year is treated as a current liability. The commenter stated that, therefore, twelve total yearly principal payments on the HUD-insured loan and, in many cases, all or a substantial portion of any accounts receivable financing, would be treated as a current liability, creating an unintended result. The commenter proposed to exclude principal from the calculation unless the principal is past due.

HUD Response: HUD is not persuaded that (a) current liabilities related to accounts receivable financing are not appropriately offset by current assets (e.g., cash from the accounts receivable lender as well as accounts receivable themselves) and therefore properly included in calculating working capital, or that (b) it is inappropriate to include the principal portion of other current debt payment obligations (e.g., the insured mortgage payments) in calculating working capital (as GAAP would prescribe). However, HUD notes that the operator's regulatory agreement, consistent with the 2012 Final 232 Rule, states that program obligations will provide further clarification and details on the required financial calculations, as the need arises.

Healthcare Security Instrument (HUD–94000–ORCF)

Comment: Require the FHA Lender to sign the agreements. A commenter stated that in order to enforce affirmative obligations against a party (such as the FHA lender or HUD), such party must execute the loan document in question. The commenter mentioned the security instrument as an example, stating that the lender should be required to execute the security instrument.

HUD Response: HUD agrees, in part. With regard to the security instrument, HUD neither requires nor prohibits lender execution of this document. HUD notes that, while legal conventions and requirements vary from state to state, in most instances it is not necessary for the lender to execute a mortgage in order to enforce it. To the extent the document limits a lender's right to enforce certain provisions by establishing certain process requirements or other limitations, such as notice provisions, such provisions do not require the lender to execute the document in order to be in force. The borrower simply limits the rights it is granting to the lender to the extent set forth in the document. Nonetheless, HUD recognizes that state-specific conventions or party-specific negotiations may favor lender execution of this document.

Operator Security Agreement (HUD–92323–ORCF)

Comment: Revise Account Control Agreement Requirements. Commenters stated that provisions in paragraph 2(h) relating to required control agreements on deposit accounts are overly broad. The commenter suggested clarifications and limits on these provisions.

HUD Response: HUD has reviewed these comments and has accepted some comments, but has determined that other changes are too broad. The published redlined version of the document reflects the revised language.

Comment: Do Not Record Account Information. A commenter stated that the operator's cash management structure attached as an exhibit to the operator's security agreement contains sensitive information and should not be recorded.

HUD Response: HUD agrees. The Operator Security Agreement is not set up for recording. Only the assignment of rents, included as an attachment to this form document, should be recorded. The cash flow exhibit should not be recorded.

Comment: Require the Lender to sign the Security Agreement: The commenter stated that the penultimate sentence of paragraph (h) includes an affirmative covenant of the lender that ''unless a default exists under this Agreement or the Loan Documents, lender will not provide notice under a DACA to the depositary bank * * * that lender is exercising rights of control in the deposit accounts.'' The commenter stated that for that covenant to be effective, the lender must be a signatory to the Security Agreement.

HUD Response: HUD agrees. The document is already set up for the lender to sign.

Comment: Delete Syndication Provisions. A commenter stated that provisions in section 20(b)(vi) of the operator's security agreement, relating to the syndication of an accounts receivable loan, should be deleted as an operator has no control over when or whether its AR loan is syndicated.

HUD Response: HUD has revised this provision to clarify that HUD is not imposing syndication requirements, but recognizing that syndicated accounts receivable loans could run afoul of HUD's other requirements unless an exception is provided in this section.

Intercreditor Agreement (for AR Financed Projects) (HUD–92322–ORCF)

Comment: Publish the Intercreditor Agreement as a ''Guide'' Document Only. A commenter stated that given the unique requirements of each transaction, the Intercreditor Agreement (ICA) should be published in final form as a ''guide'' only, not a required form.

HUD Response: Although HUD recognizes the need for flexibility to respond to deal-specific requirements, HUD also recognizes the need for increased standardization in the healthcare program. HUD has determined that the form ICA allows for sufficient flexibility to address deal-specific concerns while also providing standardized and reasonable requirements.

Comment: Define the ICA as an ''AR Loan Document.'' A commenter stated that they do not understand why the ICA is not considered an AR Loan Document for purposes of the ICA. The commenter stated that most AR lenders' loan documents will provide that the ICA is actually a crucial loan document, borrowers' adherence to which is key for the AR lender's continued funding of the AR loan. The commenter recommended that the ICA be considered a ''HUD Loan Document'' for those same reasons.

HUD Response: HUD disagrees with the commenter. Nothing in the ICA prohibits an accounts receivable lender from receiving appropriate covenants and representations from its borrowers in its loan documents or enforcing those covenants and representations. HUD is concerned with the circular enforceability of making the ICA a ''loan document'' for purposes of its own provisions. The ICA is meant to clarify the rights and responsibilities between the accounts receivable lender and the FHA lender.

Comment: Allow Additional AR Loan Obligations. A commenter stated that they do not understand why an AR lender may not have a lien, even if subordinate, on collateral other than the collateral as defined in the AR Lender Priority Collateral. The commenter stated that many AR lenders lend on the strength of a package of collateral that is much more inclusive than that set forth in the AR ''Lender Priority Collateral'' definition, even if they must take subordinate positions on such collateral. The commenter stated that if an accounts receivable lender is willing to accept the terms of the intercreditor agreement and take a subordinate position on such collateral, it is unclear why HUD would not permit the same. The commenter stated that allowing an

AR lender to take a subordinate position on such collateral does not harm HUD or the HUD lender's position with regard to the project or its operations.

HUD Response: HUD recognizes the commenter's concern but has determined that negative experiences in past practice require a limitation on what obligations the project collateral may secure. To address the commenter's concerns, HUD has provided bracketed alternative language to this definition that may allow additional obligations to be secured by project collateral with HUD consent.

Comment: Terms of AR Loan Advances and Applications of Payment Need Revision. A commenter suggested that the terms and provisions of section 3.4 relating to the terms of AR loan advances and how funds received are applied should be revised to more accurately reflect contemporary arrangements and HUD requirements and provide flexibility for deal-specifics.

HUD Response: HUD agrees and the Intercreditor Agreement has been revised to clarify the provisions, provide alternate language and make this section revisable on a deal-specific basis.

Master Lease Addendum (HUD 92221–ORCF)

Comment: Specify the Healthcare Facility Ownership of FF&E, and Transfer of Personal Payments. A commenter suggested that revisions are necessary to the provisions regarding fixtures, furnishings, and equipment in section 9 of the addendum to the master lease in order to make this document consistent with the addendum to the operating lease.

HUD Response: HUD agrees and has revised this document accordingly.

Master Lease Subordination, Non-Disturbance and Attornment Agreement. (HUD–92333–ORCF)

Comment: Restore Recitals and Execute Separate Subordination Documents. A commenter stated that there is a conceptual problem with this document as drafted. The commenter stated that accepted practice to date, and a practice that the commenter suggested continue, is that a separate Master Lease Subordination, Non-Disturbance and Attornment Agreement (''SNDA'') be executed by the lender, the Master Tenant, the applicable borrower who owns the facility which is securing the subject HUD Loan, and by the Subtenant/Operator who operates that facility, on a loan by loan basis. The draft document contemplates all Borrowers/Landlords and all Subtenants/Operators execute the same SNDA. That rarely, if ever, happens in practice because most HUD portfolio loans close over an extended period of time, with borrowers added to a Master Lease as the loan to each such borrower closes, with each borrower, operator and the Master Tenant then signing a separate SNDA, as stated above. The commenter stated that this proposed form will not work in practice so the commenter strongly urged the restoration of the prior recitals referencing ''Other HUD Borrowers'', ''Other Subleases,'' ''Other Operators,'' and ''Other Mortgage Loans.''

HUD Response: HUD recognizes the commenter's concerns but has determined that the document works as drafted. Since this addendum is an addendum to the one master lease, there should only be one addendum containing the required provisions, and additional parties can be added as necessary.

Guide for Opinion of Borrower's Counsel (HUD–91725–ORCF)

Guide for Opinion of Operator's Counsel—Certification (HUD–92325–ORCF)

Guide for Opinion of Master Tenants Counsel Certification (HUD–92225–ORCF)

Comment: Technical Revisions. A commenter suggested several technical revisions to these documents.

HUD Response: HUD agrees in part and appropriate revisions are reflected in the published redlined versions of the documents.

As noted previously, these and all other changes made in response to comment are displayed in redline format on HUD's Web page, *http://www.hud.gov/232forms*.

V. Transition

Use of the final approved documents shall be implemented to correspond with the applicability of the 2012 Final 232 Rule published in the **Federal Register** on September 7, 2012 (FR 55120). As such, the following documents (typically executed at the closing stage of a transaction) shall be submitted for any transaction that receives a firm commitment on or after April 9, 2013:

Additional ORCF Documents	
HUD–91112–ORCF	Request of Overpayment of Firm Application Exam Fee.
HUD–92466–ORCF	Healthcare Regulatory Agreement—Borrower.
HUD–92466A–ORCF	Healthcare Regulatory Agreement—Operator.
HUD–94000–ORCF	Security Instrument/Mortgage/Deed of Trust.
HUD–94001–ORCF	Healthcare Facility Note.
HUD–91710–ORCF	Residual Receipts Note—Non Profit Mortgagor.
HUD–92223–ORCF	Surplus Cash Note.
HUD–91110–ORCF	Subordination, Non-Disturbance and Attornment Agreement of Operating Lease (SNDA).
HUD–92420–ORCF	Subordination Agreement—Financing.
HUD–2205A–ORCF	Borrower's Certificate of Actual Cost.
HUD–92323–ORCF	Operator Security Agreement.
HUD–91116–ORCF	Addendum to Operating Lease.
HUD–9839–ORCF	Management Certification—Residential Care Facility.
Production Certifications	
HUD–91118–ORCF	Borrower's Certification—Completion of Critical Repairs.
HUD–92434–ORCF	Lender Certification.
Additional Legal Documents	
HUD–91117–ORCF	Operator Estoppel Certificate.
HUD–91725–INST–ORCF	Instructions to Guide for Opinion of Borrower's and Operator's Counsel.
HUD–91725–CERT–ORCF	Exhibit A to Opinion of Borrower's Counsel—Certification.
HUD–91725–ORCF	Guide for Opinion of Borrower's Counsel.

HUD–92325–ORCF	Guide for Opinion of Operator's Counsel and Certification.
Escrow Documents	
HUD–91128–ORCF	Initial Operating Deficit Escrow Calculation Template.
HUD–92414–ORCF	Latent Defects Escrow.
HUD–9443–ORCF	Minor Moveable Escrow.
HUD–92476–ORCF	Escrow Agreement Noncritical Deferred Repairs.
HUD–92476B–ORCF	Escrow Agreement for Operating Deficits.
Construction Documents	
HUD–91123–ORCF	Design Professional's Certification of Liability Insurance.
HUD–93305–ORCF	Agreement and Certification.
HUD–92441–ORCF	Building Loan Agreement.
HUD–92441a-ORCF	Building Loan Agreement Supplemental.
HUD–92450–ORCF	Completion Assurance.
HUD–92442–ORCF	Construction Contract.
HUD–92554–ORCF	Supplementary Conditions of the Contract for Construction.
HUD–92479–ORCF	Offsite Bond—Dual Obligee.
HUD–92452–ORCF	Performance Bond—Dual Obligee.
HUD–92452A–ORCF	Payment Bond.
HUD–92455–ORCF	Request for Endorsement.
HUD–92412–ORCF	Working Capital Escrow.
HUD–9442–ORCF	Memo for Post-Commitment Early Start of Construction Request.
HUD–92415–ORCF	Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance (Post-Commitment Early Start of Construction).
Accounts Receivable Documents	
HUD–90020–ORCF	A/R Financing Certification.
HUD–92322–ORCF	Intercreditor Agreement (for AR Financed Projects).
Master Lease Documents	
HUD–92211–ORCF	Master Lease Addendum.
HUD–92331–ORCF	Cross-Default Guaranty of Subtenants.
HUD–92333–ORCF	Master Lease SNDA.
HUD–92335–ORCF	Guide for Opinion of Master Tenant's Counsel.
HUD–92337–ORCF	Healthcare Regulatory Agreement—Master Tenant.
HUD–92339–ORCF	Master Lease Estoppel Agreement.
HUD–92340–ORCF	Master Tenant Security Agreement.

The other final approved documents, as and when required, shall be used beginning July 12, 2013. These documents include the following:

Lender Narratives	
HUD–9001–ORCF	Lender Narrative 223a7—Main.
HUD–9001a-ORCF	Lender Narrative 223a7—Addenda—PCNA.
HUD–9001b-ORCF	Lender Narrative 223a7.223d.232i—Addendum—ALTA/ACSM Land Title Survey.
HUD–9001c-ORCF	Lender Narrative 223a7—Addendum—Environmental.
HUD–9001d-ORCF	Lender Narrative 223a7—Addendum—Other Existing Eligible Indebtedness.
HUD–9001e-ORCF	Lender Narrative 223a7.223d.232i—Addendum—Principal of Borrower.
HUD–9001f-ORCF	Lender Narrative 223a7.223d.232i—Addendum—Operator.
HUD–9001g-ORCF	Lender Narrative 223a7.223d.232i—Addendum—Management Agent.
HUD–9001h-ORCF	Lender Narrative 223a7.223d.232i—Addendum—Transfer of Physical Assets.
HUD–9001i-ORCF	Lender Narrative 223a7.223d.232i—Addendum—AR Financing.
HUD–9002–ORCF	Lender Narrative 223f.
HUD–9003–ORCF	Lender Narrative 241a.
HUD–9004–ORCF	Lender Narrative—New Construction—Single Stage.
HUD–9005–ORCF	Lender Narrative—New Construction—2 Stage Initial Submittal.
HUD–9005a-ORCF	Lender Narrative—New Construction—2 Stage Final Submittal.
HUD–9006–ORCF	Lender Narrative—Substantial Rehabilitation—Single Stage.
HUD–9007–ORCF	Lender Narrative—Substantial Rehabilitation—2 Stage Initial Submittal.
HUD–9007a-ORCF	Lender Narrative—Substantial Rehabilitation—2 Stage Final Submittal.
HUD–9008–ORCF	Lender Narrative—Blended Rate—Single Stage.
HUD–90025–ORCF	Lender Narrative—Blended Rate—2 Stage—Initial Submittal.
HUD–90025a-ORCF	Lender Narrative—Blended Rate—2 Stage—Final Submittal.
HUD–9009–ORCF	Lender Narrative 232(i)—Fire Safety Equipment Installation, without Existing HUD Insured Mortgage.
HUD–90010–ORCF	Lender Narrative 232(i)—Fire Safety Equipment Installation, with Existing HUD Insured Mortgage.
HUD–90011–ORCF	Lender Narrative 223(d)—Operating Loss Loan.

HUD–9444–ORCF	Lender Narrative Cost Certification Supplement.
Production Certifications	
HUD–90012–ORCF	Consolidated Certification—Lender.
HUD–90013–ORCF	Consolidated Certification—Borrower.
HUD–90014–ORCF	Consolidated Certification—Principal of the Borrower.
HUD–90015–ORCF	Consolidated Certification—Operator.
HUD–90016–ORCF	Consolidated Certification—Parent of Operator.
HUD–90017–ORCF	Consolidated Certification—Management Agent.
HUD–90018–ORCF	Consolidated Certification—Contractors.
HUD–90019–ORCF	Auditor Certification.
HUD–90022–ORCF	Certification for Electronic Submittal.
HUD–91130–ORCF	Building Code Certification.
HUD–9445–ORCF	Certification of Outstanding Obligations.
Additional ORCF Documents	
HUD–91708–ORCF	Agreement for Payment of Real Property Taxes.
HUD–92576A–ORCF	Certificate of Need for Health Facility.
HUD–90024–ORCF	Contact Sheet.
HUD–91126–ORCF	Financial Statement Certification.
HUD–941–ORCF	Lenders FHA Number Request Form.
HUD–92264a-ORCF	Maximum Insurable Loan Calculation.
HUD–2–ORCF	Request for Waiver of Housing Directive.
HUD–91119–ORCF	Schedule of Facilities Owned Operated or Managed.
HUD–91111–ORCF	Survey Instructions and Borrower's Certification.
HUD–92070–ORCF	Lease Addendum.
Escrow Documents	
HUD–92464–ORCF	Request Approval Advance of Escrow Funds.
Construction Documents	
HUD–91124–ORCF	Design Architect Certification.
HUD–91127–ORCF	Financial Statement Certification—General Contractor.
HUD–92408–ORCF	HUD Amendment to B108.
HUD–91125–ORCF	Staffing Schedule.
HUD–95379–ORCF	HUD Representative's Trip Report.
HUD–91129–ORCF	Lender Certification for New Construction Cost Certifications.
HUD–92456–ORCF	Escrow Agreement for Incomplete Construction.
HUD–92023–ORCF	Request for Final Endorsement.
Asset Management Documents	
HUD–92266–ORCF	Application for Transfer of Physical Assets (TPA).
HUD–93332–ORCF	Certification of Exigent Health & Safety (EH&S) Issues.
HUD–93333–ORCF	Certification Physical Condition in Compliance.
HUD–93486–ORCF	Computation of Surplus Cash.
HUD–9250–ORCF	Funds Authorizations.
HUD–9250A–ORCF	Borrower Certification and Request Detail.
HUD–92228–ORCF	Model Form Bill of Sale and Assignment.
HUD–92117–ORCF	Borrower's Certification—Completion of Non-Critical Repairs.
HUD–92417–ORCF	Personal Financial and Credit Statement.
HUD–93479–ORCF	Monthly Report for Establishing Net Income.
HUD–93480–ORCF	Schedule of Disbursements.
HUD–93481–ORCF	Schedule of Accounts Payable.

Dated: March 8, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–05826 Filed 3–13–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N262; FXRS1265030000–134–FF03R06000]

Neal Smith National Wildlife Refuge, Jasper County, IA; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the Environmental Assessment (EA) for Neal Smith National Wildlife Refuge (Refuge, NWR). In this final CCP, we describe how we intend to manage the refuge for the next 15 years.

ADDRESSES: You will find the final CCP, a summary of the final CCP, and the EA/

FONSI on the planning Web site: *http://www.fws.gov/midwest/planning/nealsmith/index.html.* A limited number of hard copies and CD–ROMs are available. You may request one by any of the following methods:

• *Email: r3planning@fws.gov*. Include ''Neal Smith Final CCP'' in the subject line of the message.

• *U.S. Mail:* Neal Smith National Wildlife Refuge, P.O. Box 399, 9981 Pacific Street, Prairie City, IA 50228.

FOR FURTHER INFORMATION CONTACT: Christy Smith, 515–994–3400.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Neal Smith National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (73 FR 76677) on December 17, 2008. For more about the initial process and the history of this refuge, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability (77 FR 50155) on August 20, 2012. The 30-day comment period ended on September 19, 2012. A summary of public comments and the agency responses is included in the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service 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 and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The final CCP may be found at *http://www.fws.gov/midwest/planning/nealsmith/index.html.* The final CCP includes detailed information about the planning process, refuge, issues, and management alternative selected. The Web site also includes an EA and FONSI, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 et seq.). The EA/FONSI includes discussion of four alternative refuge management options. The Service's selected alternative is reflected in the final CCP.

The selected alternative focuses on increasing the amount and diversity of native vegetation on the refuge, and providing the varied habitat structure needed to support wildlife, especially declining populations of migratory grassland birds. Additional effort is directed toward restoring floristic quality on prairie and savanna remnants and monitoring and learning from the results of management actions. The refuge boundary is expanded to the east and west by 3,210 acres, to include all tributaries of Walnut Creek that flow through the refuge. A detailed description of objectives and actions included in this selected alternative is found in chapter 4 of the final CCP.

Christopher P. Jensen,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–05901 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N260; FXRS1265030000–134–FF03R06000]

Great Lakes Islands Refuges, MI and WI; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for islands that are part of the National Wildlife Refuge System in Lakes Huron, Michigan, and Superior. The CCP includes Gravel Island, Green Bay, Harbor Island, Huron, and Michigan Islands National Wildlife Refuges (Great Lakes Islands Refuges). In this final CCP, we describe how we intend to manage the refuges for the next 15 years.

ADDRESSES: You will find the final CCP and the EA/FONSI on the planning Web site at *http://www.fws.gov/midwest/planning/GreatLakesIslands/index.html*. A limited number of hard copies and CD–ROMs are available. You may request one by any of the following methods:

• *Email: r3planning@fws.gov*. Include ''Great Lakes Islands Final CCP'' in the subject line of the message.

• *U.S. Mail:* Conservation Planning, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437.

FOR FURTHER INFORMATION CONTACT: Gary Muehlenhardt, 612–713–5477.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the Great Lakes Islands Refuges, which we began by publishing a notice of intent in the **Federal Register** (73 FR 76677) on December 17, 2008. The Great Lakes Islands Refuges are comprised of Gravel Island and Green Bay National Wildlife Refuges, Door County, Wisconsin; Harbor Island National Wildlife Refuge, Chippewa County, Michigan; Huron National Wildlife Refuge, Marquette County, Michigan; and Michigan Islands National Wildlife Refuge, Arenac, Alpena, and Charlevoix Counties, Michigan.

For more about the initial process and the history of these refuges, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability (77 FR 51552) on August 24, 2012. The 30-day comment period ended on September 24, 2012. A summary of public comments and the agency responses is included in the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C.

668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service 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 and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The final CCP may be found at *http://www.fws.gov/midwest/planning/GreatLakesIslands/index.html*. The final CCP includes detailed information about the planning process, the refuges, issues, and management alternative selected. The Web site also includes an EA and FONSI, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 et seq.). The EA/FONSI includes discussion of three alternative refuge management options. The Service's selected alternative is reflected in the final CCP. The selected alternative would provide for the growth of the island refuges by up to 14,133 additional acres, and more opportunities for compatible recreational use. A detailed description of objectives and actions included in this selected alternative is found in chapter 4 of the final CCP.

Christopher P. Jensen,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–05900 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2013–N043; FXES11130300000F3–134–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before April 15, 2013.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**.

Permit Applications

Permit Application Number: TE98032A

Applicant: James E. Gardner, Jefferson City, MO.

The applicant requests a permit to take (capture and release) Indiana bats (*Myotis sodalis*), Gray bats (*Myotis grisescens*), and Ozark big-eared bats (*Corynorhinus townsendii ingens*) throughout the States of Arkansas, Illinois, Iowa, Kansas, Kentucky, Minnesota, Missouri, Oklahoma, and Tennessee. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE38769A

Applicant: Sarah A. Bradley, Mark Twain National Forest, Salem, MO.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats within the Mark Twain National Forest, Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98039A

Applicant: Kevin J. Roe, Iowa State University, Ames, IA.

The applicant requests a permit to take (capture, sample, and collect) the Iowa Pleistocene Snail (*Discus macclintocki*) within Iowa and Illinois. The proposed scientific research is for the conservation and recovery of the species in the wild.

Permit Application Number: TE77530A

Applicant: Douglas J. Kapusinski, Cleveland, OH.

The applicant requests a permit amendment to take (capture and release) the following mussels within the States of Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin:

Dwarf wedgemussel—*Alasmidonta heterodon*
Spectaclecase—*Cumberlandia monodonta*
Fanshell—*Cyprogenia stegaria*
Purple Catspaw—*Epioblasma obliquata obliquata*
White Catspaw—*Epioblasma obliquata perobliqua*
Northern riffleshell—*Epioblasma torulosa rangiana*
Tubercled blossom—*Epioblasma torulosa torulosa*
Snuffbox—*Epioblasma triquetra*
Cracking pearlymussel—*Hemistena lata*
Pink mucket—*Lampsilis abrupta*
Higgins eye pearlymussel—*Lampsilis higginsii*
Scaleshell—*Leptodea leptodon*
Ring pink—*Obovaria retusa*
White wartyback—*Plethobasus cicatricosus*
Orangefoot pimpleback—*Plethobasus cooperianus*
Sheepnose—*Plethobasus cyphyus*
Clubshell—*Pleurobema clava*
James spinymussel—*Pleurobema collina*

Rough pigtoe—*Pleurobema plenum*
Fat pocketbook—*Potamilus capax*
Winged mapleleaf—*Quadrula fragosa*
Rayed bean—*Villosa fabalis*

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE207178

Applicant: Amy L. Halsall, Aurora, IL.

The applicant requests a renewed permit to take (capture and release) Indiana bats within the States of Illinois and Indiana. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98057A

Applicant: Lynda M. Mills, Festus, MO.

The applicant requests a renewed permit to take (capture and release) Indiana bats and Gray bats within the State of Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE181256

Applicant: Lewis Environmental Consulting, LLC, Murray, KY.

The applicant requests a permit amendment to add the rabbitsfoot mussel (*Quadrula cylindrica cylindrica*) to the list of species covered under the permit and to include authorization to work within the State of Michigan. Proposed activities are for the enhancement of survival and recovery of mussel species in the wild.

Permit Application Number: TE98063A

Applicant: Kathryn M. Womack, Columbia, MO.

The applicant requests a permit to take (capture and release) Indiana bats and gray bats within the State of Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE207526

Applicant: Columbia Environmental Research Center, U.S. Geological Survey, Columbia, MO.

The applicant requests a permit amendment to take (capture, sample, release; capture and hold) Pallid Sturgeon (*Scaphirhyncus albus*) within the Missouri River and Middle Mississippi River. Proposed research activities are for the conservation and recovery of the species in the wild.

Permit Application Number: TE135297

Applicant: Saint Louis Zoo, St. Louis, MO.

The applicant requests a permit renewal and amendment to take (capture and release; capture and hold) American burying beetle (*Nicrophorus americanus*) within the States of Missouri and Arkansas, and at the Zoo facility in St. Louis, MO. Proposed activities are for the propagation and enhancement of survival of the species in the wild.

Permit Application Number: TE38789A

Applicant: BHE Environmental, Inc., Cincinnati, OH.

The applicant requests a permit renewal and amendment to take (capture and release) the following mammal, mussel and fish species:

Bat, Gray—*Myotis grisescens*
Bat, Indiana—*Myotis sodalis*
Pocketbook, Ouachita rock—*Arkansia wheeleri*
Bean, rayed—*Villosa fabalis*
Catspaw, white (pearlymussel)—*Epioblasma obliquata perobliqua*
Higgins eye (pearlymussel)—*Lampsilis higginsii*
Mapleleaf, winged—*Quadrula fragosa*
Mussel, scaleshell—*Leptodea leptodon*
Mussel, sheepnose—*Plethobasus cyphyus*
Mussel, snuffbox—*Epioblasma triquetra*
Pearlymussel, Curtis—*Epioblasma florentina curtisii*
Purple cat's paw pearlymussel—*Epioblasma obliquata obliquata*
Spectaclecase (mussel)—*Cumberlandia monodonta*
Acornshell, southern—*Epioblasma othcaloogensis*
Bankclimber, purple (mussel)—*Elliptoideus sloatianus*
Bean, Choctaw—*Villosa choctawensis*
Bean, Cumberland (pearlymussel)—*Villosa trabalis*
Blossom, green (pearlymussel)—*Epioblasma torulosa gubernaculum*
Blossom, tubercled (pearlymussel)—*Epioblasma torulosa torulosa*
Blossom, turgid (pearlymussel)—*Epioblasma turgidula*
Blossom, yellow (pearlymussel)—*Epioblasma florentina florentina*
Clubshell, black—*Pleurobema curtum*
Clubshell, ovate—*Pleurobema perovatum*
Clubshell, southern—*Pleurobema decisum*
Combshell, Cumberlandian—*Epioblasma brevidens*
Combshell, southern—*Epioblasma penita*
Combshell, upland—*Epioblasma metastriata*
Ebonyshell, round—*Fusconaia rotulata*
Elktoe, Appalachian—*Alasmidonta raveneliana*
Elktoe, Cumberland—*Alasmidonta atropurpurea*
Fanshell—*Cyprogenia stegaria*
Fatmucket, Arkansas—*Lampsilis powellii*
Heelsplitter, Alabama (=inflated)—*Potamilus inflatus*
Heelsplitter, Carolina—*Lasmigona decorata*
Kidneyshell, southern—*Ptychobranchus jonesi*
Kidneyshell, triangular—*Ptychobranchus greenii*
Lampmussel, Alabama—*Lampsilis virescens*
Lilliput, pale (pearlymussel)—*Toxolasma cylindrellus*
Moccasinshell, Alabama—*Medionidus acutissimus*
Moccasinshell, Coosa—*Medionidus parvulus*
Moccasinshell, Gulf—*Medionidus penicillatus*
Moccasinshell, Ochlockonee—*Medionidus simpsonianus*
Monkeyface, Cumberland (pearlymussel)—*Quadrula intermedia*
Mucket, orangenacre—*Lampsilis perovalis*
Mucket, pink (pearlymussel)—*Lampsilis abrupta*
Mussel, oyster—*Epioblasma capsaeformis*
Pearlshell, Alabama—*Margaritifera marrianae*
Pearlshell, Louisiana—*Margaritifera hembeli*
Pearlymussel, birdwing—*Lemiox rimosus*
Pearlymussel, cracking—*Hemistena lata*
Pearlymussel, dromedary—*Dromus dromas*
Pearlymussel, littlewing—*Pegias fabula*
Pigtoe, Cumberland—*Pleurobema gibberum*
Pigtoe, dark—*Pleurobema furvum*
Pigtoe, finerayed—*Fusconaia cuneolus*
Pigtoe, flat—*Pleurobema marshalli*
Pigtoe, fuzzy—*Pleurobema strodeanum*
Pigtoe, Georgia—*Pleurobema hanleyianum*
Pigtoe, heavy—*Pleurobema taitianum*
Pigtoe, narrow—*Fusconaia escambia*
Pigtoe, oval—*Pleurobema pyriforme*
Pigtoe, rough—*Pleurobema plenum*
Pigtoe, shiny—*Fusconaia cor*
Pigtoe, southern—*Pleurobema georgianum*
Pigtoe, tapered—*Fusconaia burkei*
Pimpleback, orangefoot (pearlymussel)—*Plethobasus cooperianus*
Pocketbook, fat—*Potamilus capax*
Pocketbook, finelined—*Lampsilis altilis*
Pocketbook, shinyrayed—*Lampsilis subangulata*
Pocketbook, speckled—*Lampsilis streckeri*
Riffleshell, tan—*Epioblasma florentina walkeri (=E. walkeri)*
Ring pink (mussel)—*Obovaria retusa*
Slabshell, Chipola—*Elliptio chipolaensis*
Spinymussel, Altamaha—*Elliptio spinosa*

Spinymussel, Tar River—*Elliptio steinstansana*
Stirrupshell—*Quadrula stapes*
Three-ridge, fat (mussel)—*Amblema neislerii*
Wartyback, white (pearlymussel)—*Plethobasus cicatricosus*
Bean, purple—*Villosa perpurpurea*
Clubshell—*Pleurobema clava*
Monkeyface, Appalachian (pearlymussel)—*Quadrula sparsa*
Rabbitsfoot, rough—*Quadrula cylindrica strigillata*
Riffleshell, northern—*Epioblasma torulosa rangiana*
Spinymussel, James—*Pleurobema collina*
Wedgemussel, dwarf—*Alasmidonta heterodon*
Darter, Niangua—*Etheostoma nianguae*
Madtom, Scioto—*Noturus trautmani*
Cavefish, Ozark—*Amblyopsis rosae*
Dace, Laurel—*Chrosomus saylori*
Sculpin, pygmy—*Cottus paulus (=pygmaeus)*
Shiner, blue—*Cyprinella caerulea*
Chub, spotfin—*Erimonax monachus*
Chub, slender—*Erimystax cahni*
Darter, slackwater—*Etheostoma boschungi*
Darter, vermilion—*Etheostoma chermocki*
Darter, relict—*Etheostoma chienense*
Darter, Etowah—*Etheostoma etowahae*
Darter, yellowcheek—*Etheostoma moorei*
Darter, watercress—*Etheostoma nuchale*
Darter, Okaloosa—*Etheostoma okaloosae*
Darter, duskytail—*Etheostoma percnurum*
Darter, rush—*Etheostoma phytophilum*
Darter, bayou—*Etheostoma rubrum*
Darter, Cherokee—*Etheostoma scotti*
Darter, bluemask (=jewel)—*Etheostoma sp.*
Darter, Cumberland—*Etheostoma susanae*
Darter, boulder—*Etheostoma wapiti*
Silverside, Waccamaw—*Menidia extensa*
Shiner, palezone—*Notropis albizonatus*
Shiner, Cahaba—*Notropis cahabae*
Shiner, Cape Fear—*Notropis mekistocholas*
Madtom, smoky—*Noturus baileyi*
Madtom, chucky—*Noturus crypticus*
Madtom, yellowfin—*Noturus flavipinnis*
Madtom, pygmy—*Noturus stanauli*
Darter, amber—*Percina antesella*
Darter, goldline—*Percina aurolineata*
Logperch, Conasauga—*Percina jenkinsi*
Darter, snail—*Percina tanasi*
Dace, blackside—*Phoxinus cumberlandensis*
Sturgeon, Alabama—*Scaphirhynchus suttkusi*
Cavefish, Alabama—*Speoplatyrhinus poulsoni*
Darter, Maryland—*Etheostoma sellare*
Logperch, Roanoke—*Percina rex*
Shiner, Topeka—*Notropis topeka (=tristis)*
Madtom, Neosho—*Noturus placidus*

Activities are proposed throughout the range of the species which includes the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. The purpose of the proposed activities is to conserve and enhance the survival of the species in the wild through population monitoring, habitat assessments, and determination of presence/absence of the species in the wild.

Permit Application Number: TE98111A

Applicant: Ohio Department of Transportation, Columbus, OH.

The applicant requests a permit to take (capture and release/relocate) the following mussel species throughout the State of Ohio: clubshell, fanshell, northern riffleshell, pink mucket pearlymussel, purple catspaw, white catspaw, rayed bean, snuffbox, sheepnose and rabbitsfoot. Proposed activities are for the purpose of conservation and recovery of the species in the wild through project planning and habitat evaluation.

Permit Application Number: TE15027A

Applicant: Stantec Consulting Services, Inc., Columbus, OH.

The applicant requests a permit renewal and amendment to take (capture and release) Indiana bats and gray bats throughout the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Pennsylvania, Ohio, Oklahoma, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE212440

Applicant: John Chenger, Bat Conservation and Management, Carlisle, PA.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats throughout the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Ohio, Oklahoma, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE113009

Applicant: Steven Ahlstedt, Norris, TN.

The applicant requests a permit amendment to include the following mussel species: Littlewing pearly mussel, Fluted kidneyshell (*Ptychobranchus subbtentum*), Cumberland bean, Cumberland Combshell, and Tan Riffleshell. The proposed amendment includes expanding the geographic area in which the applicant may work to include locations within Kentucky. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98294A

Applicant: Normandeau Associates, Stowe, PA.

The applicant requests a permit to take (capture and release) Indiana bats throughout the State of Ohio. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE212427

Applicant: Ecology and Environment, Inc., Lancaster, NY.

The applicant requests a permit renewal and amendment to take (capture and release) Indiana bats, gray bats, Virginia big eared bats (*Corynorhinus townsendii virginianus*), and Ozark big-eared bats throughout the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98295A

Applicant: Dallas Scott Settle, DBA Alliance Consulting, Fayetteville, WV.

The applicant requests a permit to take (capture and release) Indiana bats, gray bats, and Virginia big eared bats within the States of Illinois and West Virginia. Proposed activities are for the

recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98296A

Applicant: Braden A. Hoffman, DBA Alliance Consulting, Fayetteville, WV.

The applicant requests a permit to take (capture and release) Indiana bats and gray bats throughout the range of the species: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Illinois, Indiana, Iowa, Maryland, Michigan, Mississippi, Missouri, New York, New Hampshire, North Carolina, Pennsylvania, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE82665A

Applicant: Melody L. Myers-Kinzie, Indianapolis, IN.

The applicant requests a permit amendment to add rabbitsfoot and spectaclecase mussels to the list of mussels on her permit to take (capture and release) mussel species for the purpose of enhancement of survival of the species in the wild. The proposed amendment also includes adding the States of Illinois, Iowa, and Michigan to the scope of the permit.

Permit Application Number: TE98298A

Applicant: Ohio Environmental Protection Agency, Groveport, OH.

The applicant requests a permit to take (capture and release; salvage dead specimens) mussels within Ohio's streams and rivers. Federally listed species proposed to be included on the permit are: clubshell, fanshell, northern riffleshell, pink mucket pearlymussel, purple catspaw, rabbitsfoot, rayed bean, sheepnose, snuffbox, and white catspaw. Proposed activities are for the conservation and recovery of the species through evaluation and protection of habitats.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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: March 7, 2013.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2013–05824 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2013–N053; FXES11130100000F5–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with respect to endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by April 15, 2013.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 et seq.) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review by request from the Endangered Species Program Manager at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Subpermit Number: TE–97901A

Applicant: Ridgefield National Wildlife Refuge, Ridgefield, Washington.

The applicant requests a subpermit to take (haze, capture, and relocate) the Columbian white-tailed deer in conjunction with a translocation effort in the State of Washington for the purpose of enhancing the species' survival.

Permit Number: TE–97903A

Applicant: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services, Olympia, Washington.

The applicant requests a permit to take (haze, capture, and relocate) the Columbian white-tailed deer in conjunction with a translocation effort in the State of Washington for the purpose of enhancing the species' survival.

Permit Number: TE–98686A

Applicant: Washington Department of Fish and Wildlife, Olympia, Washington.

The applicant requests a permit to take (haze, capture, and relocate) the Columbian white-tailed deer in conjunction with a translocation effort in the State of Washington for the purpose of enhancing the species' survival.

Permit Number: TE–98069A

Applicant: Cowlitz Indian Tribe, Longview, Washington.

The applicant requests a permit to take (haze, capture, and relocate) the Columbian white-tailed deer in conjunction with a translocation effort in the State of Washington for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: March 5, 2013.

Richard Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–05823 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N067; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before April 15, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Birmingham Zoo, Inc. Birmingham, AL; PRT–675484

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Cebidae
- Cercopithecidae
- Felidae (*does not include* jaguar, margay or ocelot)
- Hominidae
- Hylobatidae
- Lemuridae
- Rhinocerotidae
- Tapiridae
- Accipitridae

Applicant: Animal Conservation Unlimited, dba Animal Interaction Design Group, Virginia Beach, VA; PRT–93580A

The applicant requests a permit to export and re-import 4 male captive hatched jackass penguins (*Spheniscus demersus*) to and from Assiniboine Park Zoo, Winnipeg, Manitoba, Canada for the purpose of enhancement of the survival of the species through temporary exhibition. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: The Young Scholar, Medina, OH; PRT–98777A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Deborah Voyles, Richmond, TX; PRT–98787A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Deborah Voyles, Richmond, TX; PRT–98788A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and red lechwe (*Kobus leche*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Marcus Franco de Andrade, Miramar, FL; PRT–98491A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the red siskin (*Carduelis cucullata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: William Espenshade, San Diego, CA; PRT–98490A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of San Diego; PRT–96390A

The applicant requests a permit to import eight captive-bred African slender-snout crocodiles (*Crocodylus cataphractus*) from Zoo National D'Abidjan, Abidjan, Cote D'ivoire to Zoological Society of San Diego, San Diego, California for the purpose of enhancement of the survival of the species through breeding. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Cleveland Metroparks Zoo, Cleveland OH; PRT–692874

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae
Cebidae
Cercopithecidae
Felidae (*does not* include jaguar, margay or ocelot)
Hominidae
Lemuridae
Lorisidae
Rhinocerotidae
Tapiridae
Gruidae
Threskiornithidae
Genus:
Tragopan
Species:
Koala (*Phascolarctos cinereus*)

Applicant: Field Museum of Natural History, Chicago, IL; PRT–698170

The applicant requests renewal of their permit to export and re-import non-living museum/herbarium specimens of endangered and threatened species of plants and animals (excluding bald eagles) previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Brandon Turner, Mobile, AL; PRT–98930A

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–05920 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000.L19100000.BK0000.LRCMM0E04175]

Eastern States: Filing of Plat of Survey; Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Dominica Van Koten. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: These surveys were requested by the Bureau of Indian Affairs, Eastern Regions.

The lands surveyed are:

Choctaw Meridian, Mississippi

T. 11 N., R. 11 E.

The dependent resurvey of a portion of the West Boundary, a portion of the subdivisional lines, and the subdivision of Sections 18 and 19, in Township 11 North, Range 11 East, of the Choctaw Meridian, in the State Mississippi, and was accepted January 31, 2013.

We will place a copy of the plat we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 8, 2013.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2013–05930 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14100000–BX0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The survey was requested by the Eastern States Jackson Field Office of the Bureau of Land Management.

The lands surveyed are:

Tallahassee Meridian, Florida

T. 16 and 17 S., R. 34 E.

The supplemental plat identifies an unlotted parcel of land in the NW ¼ of Section 26 of Township 6 South, Range 15 East, of the Tallahassee Meridian, in the State of Florida, as shown on the original plat dated February 1827, and was accepted March 18, 2009. This supplemental plat of sections 32 and 33, Township 16 South, Range 34 East and section 5, Township 17 South, Range 34 East, Tallahassee Meridian, Florida, is made for the purpose of establishing descriptions of the subdivisions thereof, with areas by which the public lands may be disposed.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 8, 2013.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2013–05927 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–11650; PX.DYOSE0023.00.1]

Draft Environmental Impact Statement for Restoration of the Mariposa Grove of Giant Sequoias, Yosemite National Park, Madera, and Mariposa Counties, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C)) and consistent with the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470 et seq.), the National Park Service has prepared a Draft Environmental Impact Statement (EIS) for the proposed restoration of the Mariposa Grove of giant sequoias in Yosemite National Park. This Draft EIS presents three comprehensive design alternatives for restoring natural conditions in the Mariposa Grove as well as improving visitor experience and access within the Grove and at the nearby South Entrance to the park. The National Park Service is inviting public review of the document to solicit feedback on the proposed alternatives and to hear ideas and concerns for consideration in the Final EIS.

DATES: All written comments must be postmarked or transmitted not later 60 days from the date of publication in the **Federal Register** of the Environmental Protection Agency's notification of availability of the Draft EIS. Upon confirmation of this date, announcements will be provided on the project Web site (*http://www.nps.gov/yose/parkmgmt/mgrove.htm*) and via local and regional press media. Public meetings will be held during the review period (exact date, location, and times to be announced; visit the park's web pages for up-to-date information).

ADDRESSES: Written comments may be submitted electronically to *http://parkplanning.nps.gov/mariposagrove* or by mail to Superintendent, Attn: Mariposa Grove DEIS, PO Box 577, Yosemite, CA 95389. Comments may also be submitted in person during business hours to the Superintendent's Office in the Valley Administration Building or the Office of Environmental Planning and Compliance at 5083 Foresta Road, El Portal, CA.

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.

SUPPLEMENTARY INFORMATION: Comprehensive actions are needed to ensure that the Mariposa Grove continues to thrive and provide inspiration and enjoyment for future generations. The primary goals of this project are to restore degraded habitat and natural processes critical to the long-term health of the Grove and improve the overall visitor experience. The Draft EIS presents environmental analysis of three action alternatives as well as the No Action Alternative, *Alternative 1,* which serves as a baseline from which effects of the action alternatives can be compared. To address the considerable issues facing the Grove and its visitors, and consistent with goals outlined in the park's *General Management Plan* for the Mariposa Grove and South Entrance areas, the National Park Service has developed three design alternatives that include major actions to restore the Grove and improve visitor experience. *Alternative 2* (South Entrance Hub) is identified as the agency-preferred alternative. To allow for comprehensive restoration of wetlands, soundscape, and giant sequoia habitat, this alternative would relocate public parking from the lower portion of the Grove to the park's South Entrance and remove commercial tram operations. A South Entrance parking and visitor information hub would become the primary departure point for visitors using the park shuttle to the Grove. An abandoned road segment would be reopened to allow for more extensive restoration of wetlands and sequoia habitat in the lower portion of the Grove. *Alternative 3* (Grizzly Giant Hub) would relocate public parking and visitor information to the vicinity of the Grizzly Giant. This alternative would construct a bypass road to the vicinity of the Grizzly Giant, which would allow for removal of commercial tram and shuttle operations within the Grove and provide for comprehensive restoration of wetlands and giant sequoia habitat. *Alternative 4* (South Entrance Hub with Modified Commercial Tram) would

relocate the commercial tram staging and operations to the South Entrance area and reduce the route and hours of operation to enhance sequoia habitat and improve the soundscape and overall visitor experience within the Grove. The majority of public parking would be relocated to the South Entrance, the primary departure point for visitors using the park shuttle to the Grove. Numerous other rehabilitation and restoration actions, such as improvement of hydrologic flow, project-specific prescribed fire and hazardous fuel reduction treatments, soil decompaction, and improvement of visitor orientation and interpretation would be components of all of the action alternatives to varying degrees.

For further information, please contact the Office of Environmental Planning and Compliance, at (209) 379–1002 to speak with an individual, or (209) 379–1365 to leave a voicemail with your name, call-back number, and/or address.

Decision Process: All comments received on the Draft EIS will be duly considered in preparing the Final EIS. The Final EIS is expected to be available in late Fall 2013. A Record of Decision would be prepared not sooner than 30 days after release of the Final EIS. Because this is a delegated EIS, the official responsible for approving the final plan is the Regional Director, Pacific West Region, National Park Service; subsequently the official responsible for implementation of the approved plan for restoration of the Mariposa Grove is the Superintendent, Yosemite National Park.

Dated: January 17, 2013.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2013–05820 Filed 3–13–13; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12455; PCU00RP14.R50000–PPWOCRADN0]

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Amended Notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee meeting previously noticed in the **Federal Register** (77 FR 53228–53229, August 31, 2012), to occur on May 22–23, 2013, in the History Colorado Center of the History Colorado Museum, Denver Colorado, will now occur only on May 22, 2013, from 10 a.m. to 4 p.m. EDT. This meeting will be telephonic and open to the public.

DATES: The Review Committee will meet on May 22, 2013. The agenda and materials for this meeting will be posted on or before April 22, 2013. Presentation requests must be received by March 22, 2013. These are the same dates that appeared in the notice of meeting of August 31, 2012.

ADDRESSES: Electronic submissions are to be sent to: *Sherry_Hutt@nps.gov*. Mailed submissions are to be sent to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street NW., 8th Floor (2253), Washington, DC 20005.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee was established in Section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3006. The Review Committee meeting previously noticed in the **Federal Register** (77 FR 53228–53229, August 31, 2012), to occur on May 22–23, 2013, in the History Colorado Center of the History Colorado Museum, Denver Colorado, will now occur only on May 22, 2013, from 10 a.m. to 4 p.m. EDT. This meeting will be telephonic and open to the public.

The agenda for this meeting will include the appointment of the subcommittee to draft the Review Committee's Report to the Congress for 2013, and discussion of the scope of the Report; the development by the Review Committee of an agreed upon list of nominees to the Secretary of the Interior for the at-large member of the Review Committee; and National NAGPRA Program reports. In addition, the agenda may include requests to the Review Committee for a recommendation to the Secretary of the Interior, as required by law, in order to effect the agreed-upon disposition of Native American human remains determined to be culturally unidentifiable; presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. The agenda and materials for this meeting will be posted on or before April 22, 2013, at *http://www.nps.gov/nagpra*.

The Review Committee is soliciting public comment presentations by Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on the following two topics: (1) the progress made, and any barriers encountered, in implementing NAGPRA and (2) the outcomes of dispute resolution facilitated by the Review Committee pursuant to 25 U.S.C. 3006(c)(4). The Review Committee also will consider other public comment presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. Oral presentation time may be limited as necessary. Written comments may be submitted in lieu of oral presentation. A public comment presentation request must, at minimum, include an abstract of the presentation and contact information for the presenter(s). Requests must be received by the Designated Federal Official by March 22, 2013.

Those who desire to register for the meeting should contact *NAGPRA@rap.midco.net,* by May 17, 2013, for registration information. Registrants will be provided the telephone access number for the meeting. Those making disposition requests and/or public comment presentations, must register for the meeting and also provide the presentation information to the Designated Federal Official by the dates as indicated above. A transcript and minutes of the meeting will also appear on the National NAGPRA Program Web site: *http://www.nps.gov/nagpra*.

Submissions may be made in one of three ways:

1. Electronically, as an attachment to a message (preferred for submissions of 10 pages or less). Electronic submissions are to be sent to: *Sherry_Hutt@nps.gov*.

2. By mail, on a single compact disc (preferred for submissions of more than 10 pages). Mailed submissions are to be sent to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street NW., 8th Floor (2253), Washington, DC 20005.

3. By mail, in hard copy.

Such items are subject to posting on the National NAGPRA Program Web site prior to the meeting. Items submitted at the meeting are subject to posting after the meeting.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available on the National NAGPRA Program Web site, at *http://www.nps.gov/nagpra*. For the Review Committee's meeting

procedures, click on ''Review Committee,'' then click on ''Procedures.'' Meeting minutes may be accessed by going to the Web site; then clicking on ''Review Committee;'' and then clicking on ''Meeting Minutes.'' Approximately fourteen weeks after each Review Committee meeting, the meeting transcript is posted for a limited time on the National NAGPRA Program Web site.

The Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Review Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is carried out during the course of meetings that are open to the public.

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 27, 2013.

Sherry Hutt,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2013–05922 Filed 3–13–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–BISC–09775; PPSESEROC3, PPMPSAF1Y.YP0000]

Record of Decision for the Coral Reef Restoration Plan, Biscayne National Park, FL

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision (ROD) for the Coral Reef Restoration Plan (Plan) for Biscayne National Park, Florida. On May 31, 2012, the Regional Director, Southeast Region, approved the ROD for the project.

FOR FURTHER INFORMATION CONTACT: Elsa Alvear, Biscayne National Park, 9700 SW. 328th Street, Homestead, FL 33033; Telephone (786)–335–3623.

SUPPLEMENTARY INFORMATION: Many vessel groundings occur annually in Biscayne National Park, causing injuries to submerged resources. The goal of coral reef restoration actions in Biscayne National Park is to create a stable, self-sustaining reef environment of similar topography and surface complexity to that which existed prior to injury, such that natural recovery processes, enhanced through mitigation, if needed, will lead to a fully functioning coral reef community with near natural complexity, structure, and make-up of organisms. The Plan provides a systematic approach to addressing injuries to coral reefs caused by vessel groundings within Biscayne National Park. The Environmental Impact Statement prepared for the Plan analyzed two alternatives, the No Action alternative (Alternative 1) and Restoration Using a Programmatic Approach (Alternative 2).

Alternative 1 would not change the existing approach to coral reef restoration planning and implementation, including NEPA compliance. Currently, Biscayne National Park resource managers evaluate the impacts of coral reef restoration actions and specific restoration methods when planning and implementing restoration at each grounding incident. In contrast, to address each coral injury under Alternative 2, the most appropriate restoration actions and specific restoration methods would be selected from a ''toolbox'' of methods that already have had their impacts evaluated programmatically. Under Alternative 2, 10 reasonable and common coral reef restoration actions were identified and evaluated for inclusion in the toolbox.

The ROD identifies Alternative 2 (Restoration Using a Programmatic Approach) as the National Park Service's selected action. The ROD includes a statement of the decision made, a summary of the other alternative considered, the basis for the decision, a description of the environmentally preferable alternative, and a summary of public and agency involvement in the decision-making process. Copies of the ROD may be obtained from the contact listed below or online at *http://parkplanning.nps.gov/bisc.*

The responsible official for this Record of Decision is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: March 7, 2013.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2013–05898 Filed 3–13–13; 8:45 am]

BILLING CODE 4310–JD–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–860]

Certain Optoelectronic Devices for Fiber Optic Communications, Components Thereof, and Products Containing Same; Commission Determination Not To Review an Initial Determination Granting Complainants Avago Technologies General IP (Singapore) Pte. Ltd.'s and Avago Technologies U.S. Inc.'s Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review an initial determination (''ID'') (Order No. 8) issued by the presiding administrative law judge (''ALJ'') in the above-captioned investigation granting a motion of complainants Avago Technologies General IP (Singapore) Pte. Ltd. of Singapore (''Avago General IP'') and Avago Technologies U.S. Inc. of San Jose, California (''Avago Technologies'') to amend the complaint and notice of investigation (''NOI'').

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the

General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted by notice on October 25, 2012, based upon a complaint filed by Avago Technologies Fiber IP (Singapore) Pte. Ltd. of Singapore (''Avago Fiber IP''); Avago General IP and Avago Technologies alleging a violation of section 337 in the importation, sale for importation, or sale within the United States after importation of certain optoelectronic devices for fiber optic communications, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,947,456 and 5,596,595 (collectively, ''Asserted Patents''). 77 FR 65713 (Oct. 30, 2012). The Commission named IPtronics A/S of Roskilde, Denmark; IPtronics Inc. of Menlo Park, California; FCI USA, LLC, of Etters, Pennsylvania; FCI Deutschland GmbH of Berlin, Germany; FCI SA of Guyancourt, France; Mellanox Technologies, Inc. of Sunnyvale, California; and Mellanox Technologies Ltd. of Yokneam, Israel (collectively, ''Respondents'') as respondents. The Commission also named the Office of Unfair Import Investigations (''OUII'') as a party in this investigation.

On December 21, 2012, complainants Avago General IP and Avago Technologies (collectively, ''Avago'') filed a motion to amend the complaint and NOI to reflect the merger of original complainants, Avago Fiber IP and Avago General IP. Avago also moved to amend the complaint and NOI to reflect the change in ownership of the Asserted Patents from Avago Fiber IP to Avago General IP by virtue of an assignment from the merger. The motion states that Avago General IP remains the sole surviving entity as a result of the merger and that the OUII does not oppose the motion. On January 4, 2013, Respondents opposed the motion. Specifically, the Respondents opposed the withdrawal of Avago Fiber IP as a complainant; they did not oppose the amendments that reflect the assignment of the Asserted Patents to Avago General IP.

On February 7, 2013, the ALJ issued the subject ID granting Avago's motion. The ALJ found that good cause exists and that the interests of the parties and the public will be best served by amending the complaint and NOI. No party petitioned for review of the ID. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

Issued: March 8, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–05865 Filed 3–13–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–503]

Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel From the Dominican Republic, Fourth Annual Review

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to provide written comments in connection with the Commission's fourth annual review.

SUMMARY: The U.S. International Trade Commission (Commission) has announced its schedule, including deadlines for filing written submissions, in connection with the preparation of its fourth annual review in investigation No. 332–503, *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic, Fourth Annual Review.*

DATES: April 12, 2013: Deadline for filing written submissions.

July 26, 2013: Transmittal of fourth report to House Committee on Ways and Means and Senate Committee on Finance.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project Leader Laura Rodriguez (202–205–3499 or *laura.rodriguez@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov).* Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site *(http://www.usitc.gov).* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Section 404 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (DR–CAFTA Act) (19 U.S.C. 4112) required the Secretary of Commerce to establish an Earned Import Allowance Program (EIAP) and directed the Commission to conduct annual reviews of the program to evaluate its effectiveness and make recommendations for improvements. Section 404 of the DR–CAFTA Act authorizes certain apparel articles wholly assembled in an eligible country to enter the United States free of duty if accompanied by a certificate that shows evidence of the purchase of certain U.S. fabric. The term ''eligible country'' is defined to mean the Dominican Republic. More specifically, the program allows producers (in the Dominican Republic) that purchase a certain quantity of qualifying U.S. fabric for use in the production of certain bottoms of cotton in the Dominican Republic to receive a credit that can be used to ship a certain quantity of eligible apparel using third country fabrics from the Dominican Republic to the United States free of duty.

Section 404(d) directs the Commission to conduct an annual review of the program for the purpose of evaluating the effectiveness of the program and making recommendations for improvements. The Commission is required to submit its reports containing the results of its reviews to the House Committee on Ways and Means and the Senate Committee on Finance. The Commission submitted its report on its first annual review (USITC Publication 4175) on July 28, 2010, its report on its second annual review (USITC Publication 4246) on July 22, 2011, and its report on the third annual review (USITC Publication 4175) on July 26, 2012: The Commission expects to submit its report on its fourth annual review by July 26, 2013.

The Commission instituted this investigation pursuant to section 332(g) of the Tariff Act of 1930 to facilitate docketing of submissions and also to facilitate public access to Commission records through the Commission's EDIS electronic records system.

Submissions: Interested parties are invited to file written submissions concerning this fourth annual review. All written submissions should be addressed to the Secretary and must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission intends to publish only a public report in this review. Consequently, the report that the Commission sends to the committees will not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing its report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: March 8, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–05830 Filed 3–13–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration; Johnson Matthey, Inc.

By Notice dated November 5, 2012, and published in the **Federal Register** on November 13, 2012, 77 FR 67676, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 27, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–05803 Filed 3–13–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection: Confidentiality and Disclosure of State Unemployment Compensation Information Final Rule and State Income and Eligibility Verification Provisions of the Deficit Reduction Act of 1984, Extension Without Change

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed

and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, ETA is soliciting comments concerning the collection of data about the regulatory requirements of the Confidentiality and Disclosure of State Unemployment Compensation Information final rule and State Income and Eligibility Verification System (IEVS) provisions of the Deficit Reduction Act of 1984, which expires September 30, 2013.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before May 13, 2013.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Room S4524, Washington, DC 20210, Attention: Patricia Mertens. Telephone number: 202–693–3182 (this is not a toll-free number). Fax: 202–693–2874. Email: *mertens.patricia@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Deficit Reduction Act of 1984 established an Income and Eligibility Verification System (IEVS) for the exchange of information among state agencies administering specific programs. The programs include Temporary Assistance for Needy Families, Medicaid, Food Stamps, Supplemental Security Income, Unemployment Compensation and any state program approved under Titles I, X, XIV, or XVI of the Social Security Act. Under the Act, programs participating must exchange information to the extent that it is useful and productive in verifying eligibility and benefit amounts to assist the child support program and the Secretary of Health and Human Services in verifying eligibility and benefit amounts under Titles II and XVI of the Social Security Act.

On September 27, 2006, the ETA of the Department of Labor issued a final rule regarding the Confidentiality and Disclosure of State Unemployment Compensation Information. This rule supports and expands upon the requirements of the Deficit Reduction Act of 1984 and subsequent regulatory changes.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Title: Confidentiality and Disclosure of State Unemployment Compensation Information Final Rule and State Income and Eligibility Verification provisions of the Deficit Reduction Act of 1984.

OMB Number: 1205–0238.

Affected Public: State Workforce Agencies.

Total Annual Respondents: 53 state agencies.

Annual Frequency: As needed.

Total Annual Estimated Responses: 917,977.

Average Estimated Response Time per Response: 1 minute.

Total Annual Estimated Burden Hours: 18,903 hours.

Total Annual Estimated Burden Cost for Respondents: $795,627.27.

Signed in Washington, DC, this 7th day of March, 2013.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–05831 Filed 3–13–13; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Wage and Hour Division

RIN 1235–0018

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Records to be kept by Employers—Fair Labor Standards Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 13, 2013.

ADDRESSES: You may submit comments identified by Control Number 1235–0018, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments,

including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice must be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Wage and Hour Division of the Department of Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.*,which sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206; 207; 211; 212. FLSA requirements apply to employers of employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; however, the FLSA contains exemptions that apply to employees in certain types of employment. *See* 29 U.S.C. 213, *et al.*

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. 211(c). A FLSA covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*

The DOL has promulgated regulations 29 CFR part 516 to establish the basic FLSA recordkeeping requirements. The DOL has also issued specific sections of regulations 29 CFR parts 505, 519, 520, 525, 530, 547, 548, 549, 551, 552, 553, 570, 575, and 794 to supplement the part 516 requirements and to provide for the creation and maintenance of records relating to various FLSA exemptions and special provisions.

The Wage and Hour Division (WHD) uses this information to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document FLSA compliance, including showing qualification for various FLSA exemptions.

The WHD seeks approval to renew this information collection related to various FLSA recordkeeping requirements.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an approval for the extension of this information collection that requires employers to make, maintain, and preserve records in accordance with statutory and regulatory requirements.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Records to be kept by Employers—Fair Labor Standards Act.

OMB Number: 1235–0018.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Agency Numbers: Form WH–14, Form WH–5.

Total Respondents: 3,621,240.

Total Annual Responses: 40,288,195.

Estimated Total Burden Hours: 874,154.

Estimated Time per Response: 6 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Costs (operation/maintenance): $0.

Dated: March 11, 2013.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2013–05909 Filed 3–13–13; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 77 FR 76077 and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at:*http://www.reginfo.gov/public/do/PRAMain.*

Comments: 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; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

Title: Generic Clearance of the National Center for Science and Engineering Statistics Improvement Projects.

OMB Approval Number: 3145–0174.

Abstract. Generic Clearance for the National Center for Science and Engineering Statistics Survey Improvement Projects. Established within the National Science Foundation by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public. NCSES conducts about a dozen nationally representative surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data are obtained from these surveys. State of the art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey methodology. This may include field or pilot tests of questions for future large-scale surveys, as needed.

Expected Respondents: The respondents will be from industry, academia, nonprofit organizations, members of the public, and State, local, and Federal governments. Respondents will be either individuals or institutions, depending upon the survey under investigation. Qualitative procedures will generally be conducted in person or over the phone, but quantitative procedures may be conducted using mail, Web, email, or phone modes, depending on the topic under investigation. Up to 11,060 respondents will be contacted across all survey improvement projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NCSES's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys. Qualitative methods include, but are not limited to, expert review; exploratory, cognitive, and usability interviews; focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, telephone surveys, behavior coding, split panel tests, and field tests.

Use of the Information: The purpose of these studies is to use the latest and most appropriate methodology to improve NCSES surveys and evaluate new data collection efforts. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NCSES surveys will help policy makers in decisions on research and development funding, graduate education, and the scientific and technical workforce, as well as contributing to reduced survey costs.

Burden on the Public: NCSES estimates that a total reporting and recordkeeping burden of 14,280 hours will result from activities to improve its surveys. The calculation is shown in Table 1.

TABLE 1—POTENTIAL SURVEYS FOR IMPROVEMENT PROJECTS, WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS

Survey name	Number of respondents [1]	Hours
Graduate Student Survey	[2] 1,500	2,500
SESTAT Surveys	4,000	2,000
Early Career Doctorate Project	2,000	2,500
New and Redesigned R&D Surveys:		
Higher Education R&D	400	1,200
Government R&D	60	180
Nonprofit R&D	100	300
Business R&D	50	150
Microbusiness R&D	150	450
Survey of Scientific & Engineering Facilities	300	300
Public Understanding of S&E Surveys	200	50
Survey of Earned Doctorates	700	450
Additional surveys not specified	1,600	4,200
Total	11,060	14,280

[1] Number of respondents listed for any individual survey may represent several methodological improvement projects.
[2] This number refers to the science, engineering, and health-related departments within the academic institutions of the United States (not the academic institutions themselves).

Dated: March 8, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–05891 Filed 3–13–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: LIGO Annual Review Site Visit at Hanford Observatory for Physics (1208).

Date and Time: Tuesday, April 9, 2013; 8:00 a.m.–6:00 p.m.

Place: LIGO site at Hanford, WA.

Type of Meeting: Partially Closed.

Contact Person: Mark Coles, Director of Large Facilities, Division of Physics, National Science Foundation, Arlington, VA (703) 292–4432.

Purpose of Meeting: To provide an evaluation of the project construction for implementation of the AdvLIGO project to the National Science Foundation.

Agenda:

8:00 a.m.–8:30 a.m. Closed Panel session
8:30 a.m.–10:30 a.m. Open—Introduction: LIGO, Advanced LIGO, the 3rd Interferometer Post-Project Operations activities, Storage Plan Overview by subsystem
10:30 a.m.–12:30 p.m. Open—Tour
12:30 Lunch
1:00 p.m.–3:00 p.m. Open—Parallel discussions, if desired, and 'drill down', Group discussions; walk through Charge items
15:30 p.m.–6:00 p.m. Closed—Session Panel writing, Closeout presentation by review panel

Reason For Closing: The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: March 8, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–05816 Filed 3–13–13; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting; Regular Board of Directors Meeting

TIME AND DATE: 10:00 a.m., Thursday, March 21, 2013.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order
II. Approval of Minutes
III. Budget Discussion
IV. Financial Report
V. DC Office Move
VI. NCST Board
VII. Homeownership Challenges & Opportunities Going Forward
VIII. NC/CHC Grants
IX. FY 12 Milestone Report & Dashboard
X. COO Report
XI. MHA, NFMC & EHLP Reports
XII. Executive Session
XIII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2013–06003 Filed 3–12–13; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2011–0301]

Crystal River Unit 3 Nuclear Generating Plant, Application for Amendment to Facility Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting the request of Florida Power Corporation (the licensee), through its owner Duke Energy, to withdraw its June 15, 2011, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML112070659), application for proposed amendment to Facility Operating License No. DPR–72 for the Crystal River Unit 3 Nuclear Generating Plant (CR–3), located in Florida, Citrus County. The proposed amendment would have revised the facility operating license and the technical specifications to support operation at an increased core thermal power level.

ADDRESSES: Please refer to Docket ID NRC–2011–0301 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0301. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *NRC's ADAMS:* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564; email: *siva.lingam@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC is granting the licensee's request to withdraw its June 15, 2011, application for proposed amendment to the CR–3 Facility Operating License No. DPR–72.

The proposed amendment would have increased the licensed core power level for CR–3 from 2609 megawatts thermal (MWt) to 3014 MWt. The increase in core thermal power would have been approximately 15.5 percent over the current licensed core thermal power level and was categorized as an extended power uprate.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 11, 2012 (77 FR 1743), and a Notice of Consideration of Issuance of draft environmental assessment related to the proposed amendment published in the **Federal Register** on January 16, 2013 (78 FR 3458). However, by letter dated February 7, 2013 (ADAMS Accession No. ML13043A027), the licensee withdrew the proposed change based on the determination to retire CR–3 due to economic disadvantages to fix the containment delamination that occurred during the steam generators replacement refueling outage. As a result, all the comments received on the above **Federal Register** notices will not be resolved and the environmental assessment will not be finalized.

For further details with respect to this action, see the application for amendment dated June 15, 2011, and the licensee's letter dated February 7, 2013, which withdrew the application for license amendment.

Dated at Rockville, Maryland, this 7th day of March 2013.

For the Nuclear Regulatory Commission.

Siva P. Lingam,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–05907 Filed 3–13–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export; High-Enriched Uranium

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license amendment. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this export license amendment application follows.

NRC Export License Amendment Application
Description of Material

Name of applicant Date of application Date received Application No. Docket No.	Material type	Total quantity	End use	Recipient country
U.S. Department of Energy, National Nuclear Security Administration. February 25, 2013 February 28, 2013 XSNM3708/01 11005974	High-Enriched Uranium (93.35%).	10 kilograms uranium (9.3 kilograms U–235).	To manufacture HEU targets in France for irradiation in research reactors for fabrication of molybdenum-99 (Mo-99) medical isotopes in the Nuclear Research and Consultancy Group in the Netherlands. Amend to: (1) add Maria Reactor in Poland and Covidien Isotope Production Facility in the Netherlands to ''Intermediate Foreign Consignees(s)''; and (2) extend the expiration date from March 31, 2013 to December 31, 2013.	The Netherlands.

For the Nuclear Regulatory Commission.

Dated this March 8, 2013 at Rockville, Maryland.

Nader L. Mamish,

Director, Office of International Programs.

[FR Doc. 2013–05913 Filed 3–13–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69070; File No. SR–BX–2013–022]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Adopt Chapter V, Section 3(d)(iii) Regarding Quoting Obligations

March 7, 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 March 5, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Chapter V, Section 3(d)(iii) to provide for how the Exchange proposes to treat options market-making quoting obligations, in response to the Regulation NMS Plan to Address Extraordinary Market Volatility.

The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

Chapter V Regulation of Trading on BX Options

* * * * *

Sec. 3 Trading Halts

(a)–(c) No change.

(d) This paragraph shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (''LULD Plan''). Capitalized terms used in this paragraph shall have the same meaning as provided for in the LULD Plan. During a Limit State and Straddle State in the Underlying NMS stock:

(i)–(ii) No change.

(iii) When evaluating whether a Market Maker has met the continuous quoting obligations of Chapter VII, Section 6(d) in options overlying NMS stocks, the Exchange will not consider as part of the trading day the time that an NMS stock underlying an option was in a Limit State or Straddle State.

(e) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Chapter V, Section 3(d)(iii) [3] to provide for how the Exchange will treat options market making quoting obligations in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''), which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47). The Exchange proposes to adopt new Chapter V, Section 3(d)(iii) for a pilot period that coincides with the pilot period for the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the equities exchanges and the Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses,[4] related changes to the equities market clearly erroneous execution rules,[5] and more stringent equities market maker quoting requirements.[6] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[8]

The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[9] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[10] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[11] All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[12] Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[13] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.[14] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore unexecutable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

Proposal

The Exchange proposes to adopt Chapter V, Section 3(d)(iii) to provide that the Exchange shall exclude the amount of time an NMS stock underlying a BX option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day Options Market Makers are required to quote.

Currently, the quoting requirements appear in Chapter VII, Sections 5 and 6, which generally require that, on a daily basis, a Market Maker must during regular market hours make markets consistent with the applicable quoting requirements specified in these rules, on a continuous basis in at least sixty percent (60%) of the series in options in which the Market Maker is registered. To satisfy this requirement with respect to quoting a series, a Market Maker must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as BX may announce in advance.[15]

[3] The provisions of Chapter V, Sections 3(d)(i)–(ii) and 3(e) were filed and became effective on February 28, 2013, with a 30 day operative delay, on a pilot basis. *See* SR–BX–2013–021.

[4] *See e.g.,* BX Rule 4120.

[5] *See e.g.,* BX Rule 4762.

[6] *See e.g.,* NASDAQ Rule 4613.

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving the Plan on a Pilot Basis).

[8] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[9] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[10] *See* Section V(A) of the Plan.

[11] *See* Section VI(A) of the Plan.

[12] *See* Section VI(A)(3) of the Plan.

[13] *See* Section VI(B)(1) of the Plan.

[14] The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[15] The Exchange has filed a proposed rule change to adopt a directed order process and change its market maker quoting obligations. *See* SR–BX–2013–016.

The Exchange now proposes to subtract from the total number of minutes in a trading day the time period for an option when the underlying NMS stock was in a Limit State or Straddle State. The Exchange believes that this is appropriate for the same reasons discussed above, in light of the limited price discovery in the underlying stock and the direct relationship between an options price and the price of the underlying security. During a Limit State or Straddle State, the bid price or offer price of the underlying security will be unexecutable and the ability to hedge the purchase or sale of an option will be jeopardized. Recognizing that it may be impossible to hedge to offset the risk created by trading options, the Exchange expects that Options Market Makers will, as a result, modify their quoting behavior. The Exchange believes it is reasonable and appropriate to exclude this time period, which the Exchange believes will generally be limited.

The Exchange has considered waiving its bid/ask differential requirement (also known as quote spread parameters), but ultimately determined that those requirements should be maintained in order to promote liquidity and the operation of a fair and orderly market. Accordingly, even when the quoting obligation is not in effect, Options Market Makers who choose to quote must do so within the applicable bid-ask differentials. The Exchange believes that this should help ensure the quality of the quotes that are entered and preserves one of the obligations of being a market maker.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and with Section 6(b)(5) of the Act,[18] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because the Exchange believes that excluding the Limit and Straddle State from an Options Market Maker's quoting obligation calculation should promote just and equitable principles of trade by recognizing the particular risk that arises for liquidity providers who cannot hedge. Whenever an NMS stock is in a Limit State or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. Accordingly, the Exchange seeks to expressly remove these periods from consideration in order to enable Options Market Makers to provide the necessary liquidity and facilitate transactions on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all Participants subject to those obligations in the same manner. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily operate on competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide liquidity during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BX–2013–022 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 No. SR–BX–2013–022. 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 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

[16] Because they will continue to be subject to the market maker obligation of maintaining quotes within a certain bid/ask differential, Options Market Makers will continue to be eligible for the size pro-rata ''guarantee'' (and the directed order process, once approved by the Commission). *See* Chapter VI, Section 10 and SR–BX–2013–016. The Exchange notes that it is technically complex, and therefore, impractical, to address such guarantees.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

available publicly. All submissions should refer to File No. SR–BX–2013–022 and should be submitted on or before March 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05866 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69079; File No. SR–BATS–2013–017]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

March 8, 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 March 1, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. 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 the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify pricing applicable to the Exchange's options platform (''BATS Options'') with respect to executions subject to the Quoting Incentive Program (the ''QIP''). Specifically, the Exchange proposes to require that a Member is registered as a BATS Options Market Maker in order to receive any additional rebate subject to the QIP and to add volume tiers that will determine the amount of the additional rebate a BATS Options Market Maker will receive for executions that are eligible for the QIP.

Currently under the QIP, Professional,[6] Firm, and Market Maker [7] orders entered on BATS Options receive a rebate of $0.05 per contract, in addition to any other applicable liquidity rebate, for executions subject to the QIP. Qualifying Customer [8] order executions subject to the QIP currently receive an additional rebate of $0.01 per contract. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 60% of the time for series trading between $0.03 and $5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Options Market Maker can also qualify for the QIP by quoting at the NBB or NBO 70% of the time in such series.

The Exchange proposes to require that a Member is registered as a Market Maker in order to be eligible to receive any rebates subject to the QIP. This modification will help to incentivize Members that are not currently registered as Market Makers that currently receive rebates subject to the QIP to register as BATS Options Market Makers. Additionally, the Exchange proposes to require that, in order to receive QIP rebates for executions of contracts in an options class, a Market Maker must be registered in an average of 20% or more of the associated options series in that class. This requirement will ensure that Market Makers are not eligible for QIP rebates without being registered in what the Exchange believes to be a meaningful number of series.

The Exchange also proposes to add volume tiers that will determine the amount of the additional rebate a BATS Options Market Maker will receive for executions that are eligible for the QIP. Specifically, under the proposed tiered pricing structure, Market Makers with an average daily volume (''ADV'') [9] less than 0.25% of average total consolidated volume (''TCV'') [10] will receive an additional $0.01 per contract executed on BATS Options for Customer orders and an additional $0.05 per contract executed on BATS Options for Professional, Firm, and Market Maker orders. Market Makers with an ADV equal to or greater than 0.25%, but less than 0.75% of TCV will receive an additional $0.03 per contract executed on BATS Options for Customer orders and an additional $0.05 per contract executed on BATS Options for Professional, Firm, and Market Maker orders. Market Makers with an ADV equal to or greater than 0.75%, but less than 1.25% of TCV will receive an additional $0.03 per contract executed on BATS Options for Customer orders and an additional $0.06 per contract executed on BATS Options for Professional, Firm, and Market Maker orders. Finally, Market Makers with an ADV equal to or greater than 1.25% of

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] The term ''Professional'' is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[7] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (''OCC'').

[8] As defined on the Exchange's fee schedule, a Customer order refers to an order identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a ''Professional'' as defined in Exchange Rule 16.1.

[9] As defined on the Exchange's fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

[10] As defined on the Exchange's fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

TCV will receive an additional $0.03 per contract executed on BATS Options for Customer orders and an additional $0.08 per contract executed on BATS Options for Professional, Firm, and Market Maker orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes that requiring Members to register as Market Makers in order to receive rebates subject to QIP will help to incentivize Members to register with BATS Options as Market Makers. The Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of quotations available on the Exchange, which is beneficial to all market participants. The Exchange believes that it is reasonable, equitable and not unreasonably discriminatory to provide an incentive available only to BATS Options Market Makers because of the requisite quoting and other obligations applicable to registered BATS Options Market Makers. The Exchange further believes that the proposal is not unfairly discriminatory, despite the requirement that a Member is registered as a Market Maker in order to receive rebates pursuant to the QIP, due to the fact that registration as a BATS Options Market Maker is equally available to all Members. Additionally, the Exchange believes that requiring that a Market Maker be registered in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class will further help to increase the breadth and depth of quotations available on the Exchange by requiring Market Makers to meet the BATS Options Market Maker quoting requirements in a meaningful number of series in a class.

Volume-based rebates such as the ones maintained by the Exchange have been widely adopted in the cash equities markets and are increasingly in use by the options exchanges. Volume-based tiers are equitable in this instance because they are open to all BATS Options Market Makers on an equal basis and will provide enhanced rebates that are reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Accordingly, the Exchange believes that offering volume-based rebates for orders subject to the QIP is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality. Additionally, the Exchange believes that the proposed volume-based tiers, which will incentivize the provision of competitively priced, sustained liquidity that will create tighter spreads, benefitting both Members and public investors. Similarly, the Exchange believes that basing the proposed tiered fee structure on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. The Exchange notes that this proposal is not reducing the base QIP rebate, but rather, the proposal will provide enhanced QIP rebates to Market Makers that meet certain volume thresholds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will help the Exchange to create higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive.

(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 written comments from members or other interested parties.

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) of the Act [13] and paragraph (f) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–BATS–2013–017 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 No. SR–BATS–2013–017. 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

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f).

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 will also 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 No. SR–BATS–2013–017 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05879 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69088; File No. SR–BYX–2013–010]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules in Connection With the Limit Up-Limit Down Plan

March 8, 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 28, 2013, BATS Y-Exchange, Inc. (''BYX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. 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 is proposing to amend Rule 11.18 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.18 to establish rules to comply with the requirements of the Limit Up-Limit Down Plan. The Exchange proposes to adopt the changes to become operative on a date that coincides with the commencement of operations of the Plan, which is currently scheduled as a one-year pilot to begin on April 8, 2013. Accordingly, as proposed, the Exchange has designated an operative date of April 8, 2013 to allow the Rules to become effective and operative on the initial date of operation of the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the equities exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[6] and related changes to the equities market clearly erroneous execution rules[7] and more stringent equities market maker quoting requirements.[8] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[9] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[10]

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.[11] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.[12] As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[13] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[14] All trading

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[6] *See, e.g.,* Rule 11.18.

[7] *See, e.g.,* Rule 11.17.

[8] *See, e.g.,* Rule 11.8.

[9] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

[10] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[11] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[12] The Exchange is a Participant in the Plan.

[13] *See* Section (V)(A) of the Plan.

[14] *See* Section VI(A) of the Plan.

centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[15]

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[16] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause pursuant to Section VII of the Limit Up-Limit Dow Plan, which would be applicable to all markets trading the security.[17] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a Trading Pause for that NMS Stock.

Proposed Amendment to Rule 11.18

The Exchange is required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. In response to the new Plan, the Exchange proposes to amend its Rules accordingly.

The Exchange proposes to add Rule 11.18(e)(1)(A) to define that ''Plan'' means the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act, as amended from time to time. In addition, proposed Rule 11.18(e)(1)(B) provides that all capitalized terms not otherwise defined in paragraph (e) of the Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable.

The Exchange proposes to add Rule 11.18(e)(2) to provide that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

The Exchange proposes to add Rule 11.18(e)(3) to provide that Exchange Members shall comply with the applicable provisions of the Plan. The Exchange believes that this requirement will help ensure the compliance by its Members with the provisions of the Plan as required pursuant to Section II(B) of the Plan.[18]

The Exchange proposes to add Rule 11.18(e)(4) to provide that the Exchange's System [19] shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan. The Exchange believes that this requirement is reasonably designed to help ensure the compliance with the limit up-limit down and trading pause requirements specified in the Plan, by preventing executions outside the Price Bands as required pursuant to Section VI(A)(1) of the Plan.[20]

The Exchange proposes Rules regarding the treatment of certain trading interest on the Exchange in order to prevent executions outside the Price Bands and to comply with the new Limit Up-Limit Down Plan. In particular, the Exchange proposes to add Rule 11.18(e)(5) to provide that Exchange systems shall re-price and/or cancel buy (sell) interest that is priced or could be executed [21] above (below) the Upper (Lower) Price Band. When re-pricing resting orders because such orders are above (below) the Upper (Lower) Price Band, the Exchange will provide new timestamps to such orders. The Exchange will also provide new timestamps to resting orders at the less aggressive price to which such orders are re-priced. Any resting interest that is re-priced pursuant to this Rule shall maintain priority ahead of interest that was originally less aggressively priced, regardless of the original timestamps for such orders.

Specifically, the Exchange proposes the following provisions regarding the re-pricing or canceling of certain trading interest:

- *Market Orders and IOC Orders.* The System will only execute BATS market orders or IOC Orders at or within the Price Bands. If a Market Order or IOC Order cannot be fully executed at or within the Price Bands, the System shall cancel any unexecuted portion of the order without posting such order to the Exchange's order book.
- *Limit-priced Interest.* Limit-priced Interest.
  - *Orders Not Subject to Re-Pricing.* Limit-priced interest will be cancelled if a User has entered instructions not to use the re-pricing process and such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band.
  - *Incoming Orders.* If re-pricing is permitted based on a User's instructions, both displayable and non-displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be re-priced to the Upper (Lower) Price Band.
  - *Resting Orders.* The System shall re-price resting limit-priced interest to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and the original limit price of displayed and re-priced interest is at or within the Price Bands and a User has opted into the Exchange's optional multiple price sliding process, as described in Rule 11.9(g), the System shall re-price such displayed limit interest to the most aggressive permissible price up to the order's limit price. All other displayed and non-displayed limit interest re-priced pursuant to this paragraph (e) will remain at its new price unless the Price Bands move such that the price of resting limit-priced interest to buy (sell) would again be above (below) the Upper (Lower) Price Band.
- *Pegged Interest.* Pegged interest to buy (sell) shall peg to the specified pegging price or the Upper (Lower) Price Band, whichever is lower (higher).
- *Routable Orders.* If routing is permitted based on a User's instructions, orders shall be routed away from the Exchange pursuant to

[15] *See* Section VI(A)(3) of the Plan.

[16] *See* Section VI(B)(1) of the Plan.

[17] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[18] *See* Section II(B) of the Plan.

[19] The ''System'' is defined in BYX Rule 1.5(aa) as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[20] *See* Section VI(A)(1) of the Plan.

[21] The Exchange notes that this includes any interest that is displayed and/or resting at a less aggressive price but executable at a more aggressive price, such as orders subject to price sliding and discretionary order types.

Rule 11.13. The Exchange is not proposing any changes to its routing functionality in connection with the implementation of the Limit Up-Limit Down Plan.

• *Sell Short Orders.* During a Short Sale Price Test, as defined in Rule 11.19(b)(2), Short Sale Orders priced below the Lower Price Band shall be re-priced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 11.9(g)(2)(A).

The Exchange proposes to adopt Rule 11.18(e)(6) to state that securities shall remain subject to the requirements of paragraph (d) of the Rule until such securities become subject to the Plan. Paragraph (d) of the Rule relates to existing individual single stock trading pauses issued by each primary listing market for an NMS Stock. As set forth in proposed Rule 11.18(e)(6), once an NMS Stock is subject to the Plan, the security shall only be subject to a Trading Pause under the Plan consistent with paragraph (f) of the Rule. Thus, paragraph (d) will no longer apply to NMS Stocks subject to the Plan.

The Exchange believes that the provisions proposed above are reasonably designed to prevent executions outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [22] in general, and furthers the objectives of Section 6(b)(5) of the Act [23] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal will ensure that the Exchange's System will not display or execute trading interest outside the Price Bands in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

The proposal will also ensure that the trading interest on the Exchange is either re-priced to maintain priority or canceled in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Specifically, the proposal will help allow market participants to continue to trade NMS Stocks within Price Bands in compliance with the Plan with certainty on how certain orders and trading interest will be treated. Thus, reducing uncertainty regarding the treatment and priority of trading interest with the Price Bands should help encourage market participants to continue to provide liquidity during extraordinary market volatility. The Exchange believes it is consistent with the protection of investors and the promotion of just and equitable principles of trade to allow resting orders to retain their priority ahead of less aggressively priced liquidity in the event such resting orders are re-priced in compliance with the Plan. To do otherwise, the Exchange believes, would reduce incentives to enter the most aggressively priced, displayed liquidity, and might encourage firms to maintain interest that is one increment away from the most aggressive price level in order to be first in priority in the event of a re-pricing due to a Price Band.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal enhances cooperation among markets and other trading venues to promote fair and orderly markets and to protect the interests of the public and of investors. The Limit Up-Limit Down Plan is part of a coordinated effort amongst various parties including the Exchange and other self-regulatory organizations as well as other market participants. While the specific proposals to implement changes to Exchange functionality consistent with the Plan may differ in certain ways from the implementation adopted by other market centers, the Exchange believes its proposals are consistent with the requirements and purpose of the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2013–010 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–BYX–2013–010. 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

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BYX–2013–010 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05893 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69075; File No. SR–CHX–2013–07]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Article 1, Rule 2 (Order Types and Conditions); Article 20, Rule 4 (Eligible Orders); and Article 20, Rule 6 (Locked and Crossed Markets) To Modify the Operation of the CHX Only Order Type and Post Only Order Modifier

March 8, 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 March 1, 2013, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. CHX has filed this proposal pursuant to Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. 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

CHX proposes to amend its rules to modify the operation of the CHX Only order type and Post Only order modifier. The text of this proposed rule change is available on the Exchange's Web site at *www.chx.com* and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules that collectively govern the CHX Only order type and the Repricing Processes and the Post Only order modifier, as detailed below.[4] Through this proposed rule change, the Exchange seeks to promote greater market liquidity and competition, while maintaining compliance with relevant provisions of the Act,[5] Regulation NMS[6] and Rule 201 of Regulation SHO.[7]

Background

In 2011, the Exchange introduced the CHX Only order type, which was designed to encourage displayed liquidity on the Exchange and reduce automatic cancellations by the Matching System.[8] The CHX Only order is a limit order that is to be ranked and executed on the Exchange, without routing away to another trading center.[9] Order senders have the option to default all limit orders to ''CHX Only'' and therefore be subject to repricing. Notably, the CHX Only order type features an order handling functionality comprised of Regulation NMS repricing (''NMS repricing'') and Short Sale repricing (Short Sale repricing together with NMS repricing, the ''Repricing Processes''), to ensure compliance with Regulation NMS[10] and Rule 201 of Regulation SHO.[11] The Repricing Processes are applied to all CHX Only orders that, at the time of order entry, would be in violation of Regulation NMS[12] and/or Rule 201 of Regulation SHO,[13] if displayed or executed at the limit price. However, a CHX Only order that, at the time of order entry, can be displayed or executed in compliance with Regulation NMS[14] and Rule 201 of Regulation SHO[15] will not be subject to the Repricing Processes and shall be displayed and will be executable without repricing.

The Repricing Processes currently result in the repricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with Regulation NMS[16] and Rule 201 of Regulation SHO.[17] Specifically, NMS repricing currently reprices and displays an order upon entry and in certain cases again reprices and re-displays an order at a more aggressive price one time if and when permissible, but does not continually reprice an order based on changes in the National Best Bid (''NBB'') or National Best Offer (''NBO'', and together with the NBB, the ''NBBO''). Also, Short Sale repricing currently reprices an order once upon order entry and does not again reprice such an order after it has

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] CHX Article 1, Rule 2 (Order Types and Conditions); CHX Article 20, Rule 4 (Eligible Orders); CHX Article 20, Rule 8 (Operation of the Matching System).

[5] 15 U.S.C. 78a *et seq.*

[6] 17 CFR 242.610(d).

[7] 17 CFR 242.201.

[8] Securities Exchange Act Release No. 64319 (Apr. 21, 2011), 76 FR 23634 (Apr. 27, 2011) (SR–CHX–2011–04); CHX Article 1, Rule 2 (Order Types and Conditions); CHX Article 20, Rule 4 (Eligible Orders).

[9] The Exchange currently offers one order subtype (*i.e.* CHX Only) and two order modifiers (''Do Not Route,'' under CHX Article 1, Rule 2(k) and ''Post Only,'' under CHX Article 20, Rule 4(b)(18)) that require order execution on the Exchange only. Of the three, only orders marked CHX Only are eligible for the current Repricing processes. An order that is not marked CHX Only shall not be eligible for the current Repricing processes.

[10] 17 CFR 242.610(d).

[11] 17 CFR 242.201.

[12] 17 CFR 242.610(d).

[13] 17 CFR 242.201.

[14] 17 CFR 242.610(d).

[15] 17 CFR 242.201.

[16] 17 CFR 242.610(d).

[17] 17 CFR 242.201.

been displayed, notwithstanding movements to the NBB.

The Exchange now proposes to modify these processes so as to create an order handling functionality that will reprice, re-rank and/or re-display certain CHX Only orders multiple times depending on changes to the NBBO (the repricing of CHX Only sell short orders subject to Rule 201 of Regulation SHO [18] is dependent solely on declines to the NBB), so long as the order can be ranked and displayed in an increment consistent with the provisions of Regulation NMS [19] and Rule 201 of Regulation SHO,[20] until the order is executed, cancelled or the original limit price is reached. As such, the Exchange proposes to call this functionality the ''CHX Only Price Sliding Processes,'' which will be comprised of ''NMS Price Sliding'' and ''Short Sale Price Sliding.'' The Exchange also proposes to adopt language to make clear that the proposed CHX Only Price Sliding Processes are based on Protected Quotations [21] at equities exchanges other than the Exchange (Short Sale Price Sliding is based on the NBB) and that all CHX Only limit orders subject to the CHX Only Price Sliding Processes shall maintain their original limit price and shall retain their time priority with respect to other orders based upon the time those orders were initially received by the Matching System.

With respect to the Post Only order modifier, the Exchange proposes to amend the definition of ''Post Only'' (A) to clarify that a Post Only order that would remove liquidity from the CHX book shall be immediately cancelled and (B) to allow a CHX Only Post Only order to be eligible for the CHX Only Price Sliding Processes.[22]

The Proposed CHX Only Price Sliding Processes

Initially, the Exchange proposes to replace all reference to ''repricing'' under the rule language of CHX Only orders, with the more accurate term ''Price Sliding.'' Also, the Exchange proposes to add a description of the CHX Only Price Sliding Processes by inserting a new paragraph that states that the CHX Only Price Sliding Processes utilized by the Matching System include both NMS Price Sliding and Short Sale Price Sliding and that all CHX Only orders may be subject to either NMS Price Sliding or Short Sale Price Sliding. It is important to note that the proposed CHX Only Price Sliding Processes are only applicable to CHX Only orders. Non- CHX Only orders that, at the time of entry, would be in violation of Regulation NMS [23] or Rule 201 of Regulation SHO,[24] including ''Do Not Route'' orders, will be cancelled by the Matching System and rejected back to the order sender. To this end, the Exchange also proposes to amend Article 20, Rule 6(d) (Locked and Crossed Markets) to clarify that an order that would lock or cross a Protected Quotation of an external market may, among other possibilities, be subject to the CHX Only Price Sliding Processes, if it is a ''CHX Only'' order.

Moreover, the Exchange proposes to adopt language to clarify that CHX Only orders that are undisplayed in whole or in part (*i.e.* CHX Only orders marked ''Do Not Display'' and ''Reserve Size,'' respectively) are not eligible for the CHX Only Price Sliding Processes and that such orders that, at the time of entry, are in violation of Regulation NMS [25] and Rule 201 of Regulation SHO [26] shall be cancelled and rejected back to the order sender. Also, the Exchange proposes to clarify that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, an undisplayed sell short order that is priced above the NBB at the time of initial order entry, but due to a change in the NBB, is now priced at or below the NBB, shall be cancelled.

Proposed NMS Price Sliding

With respect to the current NMS repricing, if a CHX Only order that, at the time of entry, would cross a Protected Quotation displayed by another trading center, the Exchange will reprice the order and rank the order in the CHX book at the locking price and display the order at one minimum price variation below the NBO for bids or above the NBB for offers. Similarly, in the event a CHX Only order that, at the time of entry, would lock or cross a Protected Quotation displayed by another trading center, the Exchange will display the order at one minimum price variation below the NBO for bids or above the NBB for offers. If a CHX Only order subject to NMS repricing is matched after the initial repricing, the order will execute, without further repricing, so long as Regulation NMS [27] and Rule 201 of Regulation SHO [28] are not violated. If the CHX Only order subject to NMS repricing is not subsequently executed or cancelled and the NBBO changes such that the display of the original locking price of the CHX Only order subject to NMS repricing would not lock or cross a Protected Quotation, the order will receive a new timestamp and will be re-displayed at the original locking price. After this repricing, the CHX Only order subject to NMS Repricing will not be repriced, notwithstanding further changes to the NBBO.

As an example of how the current NMS repricing functions, assume that the NBBO for security XYZ is $30.25 by $30.26 and the best priced bid in the CHX Matching System is $30.22. A CHX Only order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since the display of the sell order at $30.24 would result in an impermissibly crossed market, the CHX Only sell order would be ranked at the locking price of $30.25 within the CHX book and displayed at $30.26, which is one minimum price increment above the NBB, in order to avoid locking the markets. If a buy limit order priced at $30.25 or higher were to be subsequently submitted to the Matching System, it could be executed against the resting CHX Only sell order at its ranked price of $30.25. If the NBB were to decrease to $30.24 without the CHX Only sell order being executed or cancelled, the CHX Only sell order would be re-displayed at the original locking price of $30.25. If the NBB were to decrease again to $30.23, the CHX Only sell order would remain ranked and displayed at $30.25.

With respect to the proposed NMS Price Sliding, the Exchange proposes to adopt language to make clear the distinction between ''Initial NMS Price Sliding'' (*i.e.* price sliding upon order entry) and ''Multiple NMS Price Sliding'' (*i.e.* price sliding orders that have already been adjusted). Under the proposed ''Initial NMS Price Sliding'' paragraph, the Exchange proposes to adopt language to clarify that NMS Price Sliding would apply if a CHX Only order, at the time of entry, would lock

[18] *Id.*

[19] 17 CFR 242.610(d).

[20] 17 CFR 242.201.

[21] Pursuant to Article 20, Rule 6(a)(1), the Exchange defines ''Protected Quotation'' as that term is defined under Rule 600(b) of Regulation NMS (17 CFR 242.600(b)), which states ''protected quotation means a protected bid or a protected offer.'' In turn, Rule 600(b)(57) of Regulation NMS (17 CFR 242.600(b)(57)) states, ''protected bid or offer means a quotation in an NMS stock that: (i) Is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc.''

[22] CHX Article 20, Rule 4(b)(18).

[23] 17 CFR 242.610(d).

[24] 17 CFR 242.201.

[25] 17 CFR 242.610(d).

[26] 17 CFR 242.201.

[27] 17 CFR 242.610(d).

[28] 17 CFR 242.201.

or cross a Protected Quotation of an *external market* in violation of Rule 610(d) of Regulation NMS.[29] Aside from this clarification, the Exchange proposes to adopt the functionality of the current NMS repricing in the proposed NMS Price Sliding, whereby CHX Only orders that lock or cross a Protected Quotation of an external market will be initially ranked at the locking price and will be displayed by the Matching System at one minimum price variation below the current NBO for bids and one minimum price variation above the current NBB for offers. In doing so, the Exchange further proposes to refer to these displayable prices as the ''Permitted Display Price.'' Finally, the Exchange proposes to adopt language to state that CHX Only orders subject to NMS Price Sliding will retain their original limit prices irrespective of the prices at which such orders are ranked and displayed. Accordingly, the Exchange proposes to refer to the rank and display of a CHX Only order rather than using the term ''reprice.'' Although the proposed ''Initial NMS Price Sliding'' will function similarly to the current NMS repricing of CHX Only orders upon order entry, the functionality of the current and proposed processes diverge after initial order entry.

Under the proposed ''Multiple NMS Price Sliding'' paragraph, the Exchange proposes to adopt language to state that following the initial ranking and display of a CHX Only order subject to NMS Price Sliding, the order will be continuously re-ranked and re-displayed until the order is executed, cancelled or its original limit price is reached. In addition, the Exchange also proposes to adopt language that states that such an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price, based upon changes to the prevailing NBBO; provided, however, that an order may be re-ranked to a less aggressive price where a Protected Quotation of an external market locks or crosses the displayed price of a resting price slid order.

To this end, the Exchange proposes to adopt language that details how the Matching System will ''Re-rank'' and ''Re-display'' a CHX Only order subject to NMS Price Sliding. Under the proposed ''Re-rank'' paragraph, the Exchange proposes to adopt language that states that in the event the NBBO changes such that a CHX Only order subject to NMS Price Sliding could be re-ranked at a higher trading increment for buy orders or lower trading increment for sell orders, without crossing a Protected Quotation of an external market, the order will receive a new timestamp and will be re-ranked at the current locking price. Under the proposed ''Re-display'' paragraph, the Exchange proposes to adopt language that states that in the event the NBBO changes such that a CHX Only order subject to NMS Price Sliding could be re-displayed at a higher trading increment for buy orders or lower trading increment for sell orders, the order will receive a new timestamp and will be re-displayed at the current Permitted Display Price.

As an example of how the proposed NMS Price Sliding would function, assume again that the NBBO for security XYZ is $30.25 by $30.26 and the best priced bid in the CHX Matching System is priced at $30.22. A CHX only order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since the order is not immediately executable within our system and a display offer of $30.24 would be impermissible, pursuant to both the current NMS repricing and proposed NMS Price Sliding processes, the CHX Only sell order would be ranked at the locking price of $30.25 within the CHX book. Moreover, the Matching System would publicly display the sell order at $30.26, which is one minimum price increment above the NBB, *i.e.* the Permitted Display Price, in order to avoid locking the market. If a buy limit order priced at $30.25 or higher were to be subsequently submitted to the Matching System, it could be executed against the resting CHX Only sell order at its ranked price of $30.25. Up to this point, the current NMS repricing and proposed NMS Price Sliding is in lockstep. However, the processes diverge once the NBB decreases.

If the NBB were to decrease to $30.24 without the CHX Only order being executed or cancelled, under the current NMS repricing, the CHX Only sell order would be re-displayed at the original locking price of $30.25 and would not be subject to further repricing. In contrast, under the proposed NMS Price Sliding, the CHX Only sell order would be re-ranked in the CHX book at the new locking price of $30.24 and re-displayed at the Permitted Display Price of $30.25. Under this scenario, a buy limit order priced at $30.24 or higher could execute against the resting CHX Only sell order at its re-ranked and original limit price.

If the NBB then reverted back to $30.25, without the order being executed or cancelled, under either the current NMS repricing or proposed NMS Price Sliding processes, the Exchange would continue to display the CHX Only sell order at $30.25 expecting the trading center that posted the new bid at $30.25 to contemporaneously send CHX a satisfying buy order pursuant to Rule 611 of Regulation NMS.[30] With respect to the ranked price, as discussed in detail below, the sell order may be re-ranked to the display price if the Matching System receives a marketable buy order. If the NBB were to instead further decrease to $30.23 without the CHX Only order being executed or cancelled, under the proposed NMS Price Sliding, the CHX Only sell order would maintain its ranked price at $30.24 because NMS Price Sliding would never result in an order being ranked or displayed beyond its original limit price. As such, the CHX Only sell order would be re-displayed at its original limit price of $30.24.

As illustrated above, following the initial ranking and display of an order subject to NMS Price Sliding, an order is typically only re-ranked to the extent it achieves a more aggressive price. However, the Exchange proposes to re-rank a resting price slid order at the same price as the displayed price (*i.e.* a less aggressive price) in the event (1) such order's displayed price is locked by a Protected Quotation of an external market and (2) the Matching System receives a marketable contra-side order.[31] This will avoid the potential of a trade-through of a Protected Quotation displayed by an external market at such ranked price.

As an example of the behavior described above, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a fully-displayable CHX Only bid to buy 100 shares at $10.12 per share, the Exchange will rank the bid at $10.12 and display the bid at $10.11 because displaying the bid at $10.12 would lock an external market's Protected Offer to sell for

[29] 17 CFR 242.610(d).

[30] 17 CFR 242.611(a).

[31] The Exchange notes that as a general matter Regulation NMS should prevent external markets from displaying Protected Quotations that lock or cross Protected Quotations displayed by the Exchange. However, in a dynamic market, such an event can and does happen for a variety of reasons. For example, if the Exchange updates its contra-side Protected Quotation, it is possible that such quotations lock or cross each other. Neither the Exchange nor the other market would know in this circumstance that such quotations would lock or cross each other when publishing their quotation updates. As another example, in the event another market receives an Intermarket Sweep Order, such market may permissibly display such order without regard to other Protected Quotations, including quotations displayed by the Exchange that lock or cross such order.

$10.12. If an external market then updated its Protected Offer to $10.11, thus locking the Exchange's displayed bid (*i.e.* the order subject to price sliding that is ranked at $10.12 and displayed at $10.11), the Exchange proposes to maintain the ranked price of the resting price slid bid at $10.12 and continue to display the order at $10.11, until a marketable contra-side order is received.

If the Exchange then received an inbound marketable offer priced at the $10.11 (*i.e.* the displayed price of the resting bid), the Exchange proposes to modify the ranked price of the resting price slid bid to the same price as the displayed price. Thus, the resting price slid bid could only execute against the incoming marketable offer at the displayed price of $10.11. Similarly, if the inbound marketable offer was priced at $10.12, the resting bid would be ranked at the displayed price of $10.11 and the inbound offer would be ranked and displayed at $10.12. By re-ranking the bid in this example to the displayed price at $10.11, the Exchange will not allow an order to trade-through the NBO when the Exchange receives a marketable contra-side offer during the locked market condition. If, however, the NBO moved back to $10.12, without the resting bid being executed or cancelled, the resting bid would be re-ranked at $10.12 and be continued to be displayed at $10.11.

The Exchange also proposes to make clear that this re-ranking will not result in a change in priority for the order at its displayed price. For instance, in the example above, assume the bid described had been posted and displayed at $10.11 and ranked at $10.12 (''Order A''), and then a later arriving bid is received by the Exchange at $10.11 (''Order B'') and posted as well, with priority behind Order A. If the Exchange then re-ranks Orders A because it has been locked by another market center's Protected Quotation, the Exchange does not believe it would be fair to cause such order to lose priority when it was originally first in priority amongst displayed orders on the Exchange. A more detailed example of order execution priority may be found below.

Moreover, the Exchange proposes to adopt language that states that when an external market crosses the Exchange's Protected Quotation and the Exchange's Protected Quotation is a resting displayed order subject to the proposed NMS Price Sliding, the Exchange proposes to rank and display the resting order based on the first uncrossed NBBO (''*pro forma* NBBO'') calculated pursuant to paragraph .01(d) of Article 20, Rule 5.[32] This *pro forma* NBBO is calculated by a CHX-specific protocol that ignores Protected Quotations that cross any Protected Quotation(s) until an uncrossed NBBO is identified. If the first uncrossed NBBO is locked and the Exchange receives a marketable contra-side order, then the resting price slid order with a ranked price that crosses the contra-side Protected Quotation would be ranked at the displayed price. If, however, the first uncrossed NBBO is not locked, then the resting price slid order would be subject to the normal rules of NMS Price Sliding and maintain its current ranked and displayed price or be price slid to a more aggressive price. Thus, the order displayed by the Exchange will still be ranked and permitted to execute at a price that crosses the ignored market's Protected Quotation, which is consistent with Rule 611(b)(4) of Regulation NMS.[33]

As an example of the behavior described above, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a CHX Only bid to buy 100 shares at $10.12 per share, the Exchange will rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.12 would lock an external market's Protected Offer to sell for $10.12. If an external market then updated its Protected Offer to $10.10, thus crossing the Exchange's displayed bid, the Exchange would ignore Protected Quotations that crossed the Exchange's displayed bid until the first uncrossed NBBO was identified. If the first uncrossed NBO was at $10.12, then the resting bid would remain ranked at $10.12 and displayed at $10.11. If, however, the first uncrossed NBO locked the resting bid and the Matching System received a marketable offer at either the ranked or displayed price, then the resting bid would be ranked at the displayed price of $10.11. A more detailed example of order execution priority may be found below.

Proposed Short Sale Price Sliding

With respect to the current Short Sale repricing, if a CHX Only sell short order that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO,[34] the Exchange will reprice and display the CHX Only sell short order at one minimum price variation above the current NBB.[35] Thereafter, a CHX Only sell short order subject to Short Sale repricing will not be readjusted downward even if it could be displayed at a lower price without violating Rule 201 of Regulation SHO.[36]

As an example of how the current Short Sale repricing functions, assume again that the NBBO for security XYZ is $30.25 by $30.26. Further, assume that the short sale price test restriction under Rule 201 of Regulation SHO is in effect for security XYZ. A CHX Only sell short order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since this CHX Only sell short order is priced below the current NBB, this order would be repriced and displayed at $30.26, one minimum price increment above the current NBB, pursuant to the provisions of Rule 612 of Regulation NMS.[37] If the NBB subsequently declined to $30.24, the CHX Only sell short order would not be repriced downward.[38] If the NBB instead increased to $30.26, the Exchange would continue to display the sell short order at $30.26 in reliance on the provision of Rule 201 of Regulation SHO [39] that permits the execution of a displayed short sale order if, at the time of the initial display, the order was priced above the then-current NBB.

With respect to the proposed Short Sale Price Sliding, similar to the organizational structure of the proposed NMS Price Sliding, the Exchange proposes to adopt language to make a clear distinction between ''Initial Short Sale Price Sliding'' (*i.e.* price sliding

[32] Paragraph .01(d) of Article 20, Rule 5 states:

''.01 Trade-through policies and procedures. In determining whether a trade on the Exchange would create an improper trade-through, the Exchange will adhere to the applicable provisions of Reg NMS, as well as to the following policies and procedures:

d. *Crossed market exception.* Trades shall continue to be executed in the Matching System when the NBBO is crossed; provided however, that the Matching System shall only execute orders in that security up to (but not beyond) the first uncrossed NBBO. If a trade is executed in the Matching System while the NBBO is crossed, the Matching System will automatically attach an appropriate modifier to the trade before it is publicly reported.''

[33] 17 CFR 242.611(b)(4).

[34] 17 CFR 242.201.

[35] When the short sale price test restriction under Rule 201 of Regulation SHO (17 CFR 242.201(b)(1)(i)) is in effect, non-CHX Only sell short orders submitted with a limit price at or below the current NBB at the time received by the Matching System and which are not marked a sell short exempt shall be cancelled and rejected back to the order sender. *See* CHX Article 20, Rule 8(d)(4).

[36] 17 CFR 242.201.

[37] 17 CFR 242.612.

[38] In contrast, if the short sale price test restriction under Rule 201 of Regulation SHO were not in effect for security XYZ, this CHX Only sell short order would have been ranked and displayed pursuant to NMS Repricing (*i.e.* ranked at $30.25 and displayed at $30.26).

[39] 17 CFR 242.201(b)(1)(iii)(A).

upon order entry) and ''Multiple Short Sale Price Sliding'' (*i.e.* price sliding orders that have already been adjusted). Under the proposed ''Initial Short Sale Price Sliding'' paragraph, the Exchange proposes to maintain the substance of the current Short Sale repricing by including language that states that a CHX Only sell short order that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO[40] will be repriced and displayed by the Matching System at one minimum price variation above the current NBB. The Exchange proposes to refer to this minimum price variation above the current NBB as the ''Permitted Price.'' Moreover, the Exchange proposes to adopt language to state that CHX Only orders subject to Short Sale Price Sliding will retain their original limit prices irrespective of the prices at which such orders are repriced and displayed. Although the proposed ''Initial Short Sale Price Sliding'' will function similarly to the current Short Sale repricing of CHX Only sell short orders upon order entry, the functionality of the current and proposed processes diverge after initial order entry.

Under the proposed ''Multiple Short Sale Price Sliding'' paragraph, the Exchange proposes to adopt language to state that to reflect declines in the NBB, the Matching System will continue to reprice a CHX Only sell short order subject to short sale price test restriction under Rule 201 of Regulation SHO at the Permitted Price, until the order is executed or the original limit price is reached. The Exchange further proposes to include language that clarifies that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, Short Sale Price Sliding will take priority over NMS Price Sliding, with respect to CHX Only sell short orders subject to Short Sale Price Sliding. In addition, the Exchange proposes to include language consistent under Rule 201(b)(1)(iii)(A) of Regulation SHO[41] that explicitly states that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the Matching System may execute a CHX Only sell short order subject to Short Sale Price Sliding at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then-current NBB. In addition, the Exchange proposes to include language that CHX Only orders marked ''short exempt'' shall not be subject to Short Sale Price Sliding.

As an example of how the proposed Short Sale Price Sliding functions, assume again that the NBBO for security XYZ is $30.25 by $30.26 and the best priced bid in the CHX Matching System is priced at $30.22. Further, assume that the short sale price test restriction under Rule 201 of Regulation SHO is in effect for security XYZ. A CHX only sell short order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since this CHX Only sell short order is priced below the current NBB and involves a security subject to the short sale price test restriction under Rule 201 of Regulation SHO, Short Sale Price Sliding will take priority over NMS Price Sliding. As such, under both the current Short Sale repricing and the proposed Short Sale Price Sliding, this order would be repriced and displayed at the Permitted Price of $30.26.

If the NBB subsequently declined to $30.24, under the current Short Sale repricing, the CHX Only sell short order would not be repriced. In contrast, under the proposed Short Sale Price Sliding, the CHX Only sell short order would be repriced and displayed at the new Permitted Price of $30.25. As such, an inbound buy limit order of $30.25 or higher (as opposed to merely $30.26 or higher under the current Short Sale repricing) could execute against the repriced CHX Only sell short order at $30.25. If the NBB then reverted back to $30.25, the Exchange would continue to display the CHX Only sell short order at $30.25 in reliance on the proposed rule that states that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the Matching System may execute a CHX Only sell short order subject to Short Sale Price Sliding at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then-current NBB.[42]

Proposed Lock-Only Price Sliding

Furthermore, the Exchange proposes to create a new paragraph that reincorporates the current lock-only repricing instruction. The proposed ''Lock-Only Price Sliding'' would permit order senders to enter an instruction for the Matching System to only apply the CHX Only Price Sliding Processes if the CHX Only order *locks* the NBBO at the time of the order entry and not if it *crosses* the NBBO. For order senders who utilize this instruction, a CHX Only order that crosses the NBBO will be immediately cancelled. In the context of Short Sale Price Sliding, an order that is priced below the NBB would be cancelled and an order priced at the NBB would be price slid.

Proposed Order Execution Priority of Price Slid Orders

The Exchange proposes to adopt language that establishes that CHX Only orders subject to the CHX Only Price Sliding Processes will retain their time priority versus other orders based upon the time those orders were initially received by the Matching System. That is, all CHX Only orders subject to either NMS Price Sliding or Short Sale Price Sliding will retain their order execution priority based upon the time those orders were initially received, but will also be subject to proposed CHX Article 20, Rule 8(b)(7), which states, in sum, that an order subject to the CHX Only Price Sliding Processes shall receive order execution priority based first on its ranked price, then original time of receipt by the Matching System.

This is an important point of clarification because although the current Repricing Processes and the proposed CHX Only Price Sliding Processes require and will require an order to be re-timestamped each time the order price is adjusted, so as to follow changes to the prevailing NBBO, the purpose of this re-timestamp is to simply record the time of the price adjustment, as opposed to establishing or retaining time priority. Instead, time priority is established by a unique sequence number (*e.g.* 1, 2, 3, etc. * * *) that the Matching System assigns to each incoming order at the original time of order entry. These sequence numbers ensure that orders retain their relative time priority to each other, even as they are priced adjusted, and these sequence numbers will not be changed nor will an order receive a new sequence number, so long as it is resting in the CHX book. The reason why a sequence number is utilized for establishing order time priority is because it allows CHX to assure proper time priority upon initial receipt by the Matching System and at subsequent price adjustments, irrespective of the granularity of the timestamp used. Consequently, sequence numbers allow and will allow each order to maintain its relative priority over other orders based on the time of original order entry, notwithstanding any price adjustments.

Example 1. As an example of how time priority of CHX Only orders subject to the CHX Only Price Sliding Processes would function and how that is reconciled with general order execution priority, assume that the NBBO for

[40] 17 CFR 242.201.

[41] 17 CFR 242.201(b)(1)(iii)(A).

[42] 17 CFR 242.201(b)(1)(iii)(A).

security XYZ is $30.25 by $30.26, the best bid in the CHX book is $30.21 and there are no resting offers in the CHX book. Further, assume that the short sale price test restriction under Rule 201 of Regulation SHO is in effect for security XYZ. Also assume that four CHX Only sell orders for 100 shares of XYZ are then entered in immediate succession and that all orders are fully displayable. The orders are received by the Matching System in the following sequence:

1: A-Original Limit Price: $30.24
2: B-Original Limit Price: $30.26
3 (short): C-Original Limit Price: $30.23
4: D-Original Limit Price: $30.23

Each Arabic numeral represents an order's sequence number. Under this scenario, Orders A, C and D are all subject to the CHX Only Price Sliding Processes because all three orders would violate Regulation NMS [43] and/or Rule 201 of Regulation SHO,[44] if displayed. Specifically, Orders A and D are subject to NMS Price Sliding and Order C is subject to Short Sale Price Sliding. Order B is not subject to the CHX Only Price Sliding Processes because its limit price of $30.26 would not impermissibly lock or cross the NBB.

Example 2. After the initial CHX Only Price Sliding Processes have been applied, the orders are prioritized for execution in the CHX book as follows:

(i): 1	A—Original Limit Price: $30.24	Rank: $30.25	Display: $30.26.
(ii): 4	D—Original Limit Price: $30.23	Rank: $30.25	Display: $30.26.
(iii): 2	B—Original Limit Price: $30.26	Rank: $30.26	Display: $30.26.
(iv): 3 (short)	C—Original Limit Price: $30.23	Rank: $30.26	Display: $30.26.

The Roman numerals represent the order execution priority. Based on CHX Article 20, Rule 8(b), Orders A and D both receive order execution priority over Orders B and C because they both have the same superior ranked price at $30.25. In addition, Order A receives execution priority over Order D, where Order A retains its time priority over Order D from the original time of entry (*i.e.* Order A has a superior sequence number to Order D). Similarly, since Orders B and C have the same ranked price at $30.26, Order B receives execution priority over Order C, where Order B has a superior sequence number to Order C.

Example 3. Assume now that the NBB for XYZ decreases to $30.23 and none of the orders have been executed or cancelled. The proposed CHX Only Price Sliding Processes will re-prioritize the orders as follows:

(i): 4	D—Original Limit Price: $30.23	Rank: $30.23	Display: $30.24.
(ii): 1	A—Original Limit Price: $30.24	Rank: $30.24	Display: $30.24.
(iii): 3 (short)	C—Original Limit Price: $30.23	Rank: $30.24	Display: $30.24.
(iv): 2	B—Original Limit Price: $30.26	Rank: $30.26	Display: $30.26.

Order D has jumped Order A because Order D has the most aggressively ranked price at $30.23 and, as such, Order D now receives order execution priority over Order A. Order A, however, has maintained its order execution priority over Order C because although Order C has been price slid so that they are now both ranked at the same price of $30.24, Order A has a superior sequence number to Order C. Order B has fallen to last on the order execution priority list because of its inferior ranked price at $30.26.

Example 4. Assume now that the NBB for XYZ decreases to $30.22 and none of the orders have been executed or cancelled. Further assume that a new CHX Only sell order of 100 shares of XYZ at $30.22 is entered (''Order E''). The proposed CHX Only Price Sliding Processes will re-prioritize the orders as follows:

(i): 5	E—Original Limit Price: $30.22	Rank: $30.22	Display: $30.23.
(ii): 3 (short)	C—Original Limit Price: $30.23	Rank: $30.23	Display: $30.23.
(iii): 4	D—Original Limit Price: $30.23	Rank: $30.23	Display: $30.23.
(iv): 1	A—Original Limit Price: $30.24	Rank: $30.24	Display: $30.24.
(v): 2	B—Original Limit Price: $30.26	Rank: $30.26	Display: $30.26.

Order E receives a sequence number inferior to the other four orders because it is the most recent sell order in security XYX to have been received by the Matching System. Also, Order E is subject to NMS Price Sliding as it would lock the NBB. However, Order E jumps to the top of the order execution priority list based on its superior ranked price at $30.22. Order C has now jumped Order D because Order C has been price slid so that they are now both ranked at the same price of $30.23 and Order C has a superior sequence number to Order D. Order A has dropped to fourth on the order execution priority list because its original limit price has been reached and a CHX Only order subject to the CHX Only Price Sliding Processes will never be price slid beyond its original limit price. Order B was never subject to the CHX Only Price Sliding Processes and remains last in the order execution priority list due to its inferior ranked price at $30.26.

Example 5. Assume now that the NBB for XYZ goes back to $30.23, thereby locking the displayed prices of Orders E, C and D. Pursuant to the proposed NMS Price Sliding, Order E would not yet be re-ranked to the displayed price. If the Matching System, however, received an incoming marketable bid priced at either $30.22 or $30.23, the proposed CHX Only Price Sliding Processes would re-prioritize the orders as follows:

(i): 3 (short)	C—Original Limit Price: $30.23	Rank: $30.23	Display: $30.23.
(ii): 4	D—Original Limit Price: $30.23	Rank: $30.23	Display: $30.23.
(iii): 5	E—Original Limit Price: $30.22	Rank: $30.23	Display: $30.23.
(iv): 1	A—Original Limit Price: $30.24	Rank: $30.24	Display: $30.24.
(v): 2	B—Original Limit Price: $30.26	Rank: $30.26	Display: $30.26.

[43] 17 CFR 242.610(d).

[44] 17 CFR 242.201.

At this point, Order E would be re-ranked at its displayed price of $30.23. If the incoming bid were priced at $30.22, the bid would be ranked and displayed at $30.22. If the incoming bid were instead priced at $30.23, the bid would execute against Orders C and D before Order E because Order E has an inferior sequence number to Orders C and D. Furthermore, Order C would be allowed to execute at the NBB locking price in reliance on the proposed rule that states that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the Matching System may execute a CHX Only sell short order subject to Short Sale Price Sliding at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then-current NBB.[45]

Example 6. Assume now that another market center posts a Protected Bid of $30.24, without any of the orders being executed. Pursuant to paragraph .01(d) of Article 20, Rule 5 and Rule 611(b)(4) of Regulation NMS, the Exchange would ignore the crossing Protected Quotation and proceed to ascertain the first uncrossed NBBO. If the first uncrossed NBBO resulted in a locked market, the orders would be prioritized and/or price slid as described in Example 5. If the first uncrossed NBBO did not result in a locked market, the orders would be subject to the normal rules of proposed CHX Only Price Sliding Processes, as shown in Examples 1–4.

Consequently, a CHX Only order subject to the CHX Only Price Sliding Processes will execute similarly to its simple limit order counterpart, except that a CHX Only order subject to the CHX Only Price Sliding Processes will execute at its ranked price or better, as opposed to its limit price or better for limit orders that are not CHX Only. Notwithstanding this difference, CHX Only orders and limit orders are subject to the same CHX rules and processes for order execution as any other non-CHX Only order, in that they may execute against a compatible contra-side order, subject to the conditions and modifiers of the respective orders and the operation of the Matching System, pursuant to CHX Article 20, Rule 8.

CHX Only Orders and Order Modifiers

Correspondingly, many of the modifiers applicable to other non-CHX Only limit orders may be applied to CHX Only orders (*e.g.* ''Time in Force'' [46] and ''Cancel on Halt'' [47]), to the extent that the modifiers do not conflict with the CHX Only order subtype (*i.e.* CHX Only orders must be displayed, must be ranked and executed on the Exchange and must be subject to the CHX Only Price Sliding Processes). For example, the ''Post Only'' modifier, with some proposed amendments detailed below, is compatible with CHX Only orders. Whereas, certain modifiers, such as ''Immediate or Cancel'' (''IOC'') [48] and ''Intermarket Sweep Order'' (''ISO'') [49] are inherently incompatible with CHX Only orders.

The current definition of Post Only does not permit a CHX Only Post Only order to be eligible for the CHX Only Price Sliding Processes. Post Only is currently defined as an order that is to be posted on the Exchange and not routed away to another trading center. Moreover, a Post Only order will be immediately cancelled if (1) it is marketable against a contra-side order in the Matching System when entered or (2) it is at a price that would lock or cross a Manual or Protected Quotation.[50] Specifically, the current definition conflicts with the proposed CHX Only Price Sliding Processes, which requires a CHX Only Post Only order that would lock or cross a Protected Quotation of an external market to be price slid and not immediately cancelled.

Therefore, the Exchange proposes to amend the definition of Post Only to allow Post Only orders marked CHX Only to be eligible for the CHX Only Price Sliding Processes. Specifically, the Exchange proposes to amend the definition of Post Only to provide that a Post Only order will be immediately cancelled (A) if the Post Only order would remove liquidity from the CHX book [51] or (B) if, at the time of order entry, the Post Only order would lock or cross a protected quotation of an external market; provided, however, that if the Post Only order is marked ''CHX Only'' and is eligible for the CHX Only Price Sliding Processes, pursuant to proposed Article 1, Rule 2(y), the Post Only order that would lock or cross a protected quotation [52] of an external market shall be subject to the CHX Only Price Sliding Processes and shall not be immediately cancelled. The following examples illustrate how a CHX Only Post Only order would behave under different market conditions.

Example 1. Assume that the NBBO for security XYZ is $10.10 x $10.12 and the short sale price test restriction of Rule 201 of Regulation SHO is not in effect. Assume further that the CHX BBO for security XYZ is also $10.10 x $10.12. Now assume that a fully-displayable CHX Only Post Only offer for security XYZ priced at $10.10 (''Offer A'') is received by the Matching System. Since Offer A would remove liquidity from the CHX book (*i.e.* resting bid at $10.10), Offer A would be immediately cancelled. This would be the result under either the current or proposed Post Only definition.

Example 2. Assume the same as Example 1 and that the NBBO for security XYZ remains at $10.10 x $10.12, but the CHX BBO moves away to $10.09 x $10.14. Also assume that

[45] 17 CFR 242.201(b)(1)(iii)(A).

[46] CHX Article 1, Rule 2(ii) defines ''Time in Force'' as ''an order that is to be executed, in whole or in part, within a specified time period, with any unexecuted balance of the order to be immediately cancelled at the end of the specified time period. No time in force order shall be in force longer than the trading day on which it is received.''

[47] CHX Article 1, Rule 2(c) defines ''Cancel on Halt'' as ''an order that should be automatically cancelled by the Matching System if a trading halt or suspension is declared in that security.''

[48] CHX Article 1, Rule 2(m) defines ''IOC'' as ''an order that is to be executed, either in whole or in part, at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. IOC orders shall be executed in the Matching System at or better than the Exchange's BBO (including any reserve size or other undisplayed orders at or better than that price).''

[49] CHX Article 20, Rule 4(b)(15) defines ''ISO,'' in pertinent part, as ''an order marked as required by SEC Rule 600(b)(30) that is to be executed against any orders at the Exchange's BBO (including any reserve size or other undisplayed orders at that price) as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. The Matching System, in executing the ISO, shall not take any of the actions described in Rule 5 to prevent an improper trade-through.'' In turn, Rule 600(b)(30) of Regulation NMS (17 CFR 242.600(b)(30)) defines ''Intermarket Sweep Order'' as ''a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders.

[50] *See* Article 20, Rule 4(b)(18).

[51] In adopting the new language for proposed subparagraph (A), the Exchange does not propose to substantively modify the specific functionality for the immediate cancellation of Post Only orders that are marketable against contra-side orders when entered. Rather, the new language is intended to clarify the meaning of the current language. That is, currently, a Post Only order will be immediately cancelled if it would take liquidity from the CHX book.

[52] The Exchange proposes to omit reference to ''Manual'' quotations, so that the proposed definition accurately reflects Rule 610(d) of Regulation NMS and is consistent with proposed Article 1, Rule 2(y).

there are no hidden (*i.e.* ''Do Not Display'' orders or ranked price of price slid orders) bids priced at $10.10 on the CHX book. Further assume that a fully-displayable CHX Only Post Only offer for security XYZ priced at $10.10 (''Offer B'') is received by the Matching System. The current definition of Post Only suggests that Offer B should be immediately cancelled because although it is not marketable against any resting bids in the CHX book, the display of Offer B would lock a protected quotation of an external market, whereas the CHX Only designation would require application of the current NMS repricing and rank Offer B at the locking price of $10.10 and display the offer at $10.11. The proposed definition of Post Only resolves this conflict by requiring Offer B to be price slid and not be immediately cancelled because it is marked CHX Only.

Example 3. Assume the same as Example 2 and that Offer B is resting in the CHX book, ranked at $10.10 and displayed at $10.11. Thus, the NBBO for security XYZ moves to $10.10 x $10.11 and the CHX BBO moves to $10.09 x $10.11. Further assume that a fully-displayable CHX Only Post Only bid for security XYZ priced at $10.11 (''Bid A'') is received by the Matching System. Under both the current and proposed definition of Post Only, Bid A would be immediately cancelled because it would take liquidity from the CHX book, namely Offer B at its ranked price of $10.10.

As a general rule, an order that is resting at a certain price point, whether it be displayed or undisplayed, is always ''providing'' liquidity to the CHX book. Conversely, if an incoming contra-side order is submitted that could execute against a resting order or if a contra-side resting order is price slid into the resting order, regardless of when the price slid order was originally submitted, the incoming or price slid contra-side order is always ''removing'' liquidity from the CHX book. Since Post Only orders may never remove liquidity from the CHX book, pursuant to the current and proposed definition of Post Only, an incoming Post Only order that is marketable against a resting contra-side order or a resting price slid Post Only order that is price slid into the resting order, shall always be cancelled.

Example 4. Assume that the NBBO for security XYZ is $10.10 x $10.12 and the CHX BBO is $10.10 x $10.14. Now assume that the Matching System receives a CHX Only Post Only bid priced at $10.13 (''Bid B''). Pursuant to NMS Price Sliding, Bid B will be ranked at $10.12 and displayed at $10.11. The NBBO is now $10.11 x $10.12 and the CHX BBO is $10.11 x $10.14. Assume further that while Bid B is resting on the CHX book, an undisplayed simple limit offer at $10.13 (''Offer C'') is received by the Matching System. Thus, the undisplayed CHX BBO is $10.12 (*i.e.* the ranked price of Bid B) x $10.13 (*i.e.* the limit price of Offer C). Then assume that the NBBO moves away to match the CHX BBO at $10.11 x $10.14.

Although the proposed NMS Price Sliding Processes would price slide Bid B to its original limit price (*i.e.* re-ranked and re-displayed at $10.13), since Offer C is already resting at $10.13, Bid B would be cancelled because the current and proposed definition of Post Only would require that Bid B be immediately cancelled if it would remove liquidity from the CHX book. Thus, this result would not change if Offer C were a fully-displayable Post Only order, as opposed to an undisplayed order.

Example 5. Assume the same as Example 4, except that Offer C is a fully-displayable Post Only offer, as opposed to an undisplayed offer. Thus, the NBBO is at $10.11 x $10.12 and the CHX BBO is now at $10.11 x $10.13. Then assume that the NBBO moves away to $10.11 x $10.13 and Bid B will be price slid to a ranked price of $10.13 and a displayed price of $10.12. Just like Example 4, Bid B will be cancelled because a Post Only order that is price slid into a price point that would remove liquidity shall always be cancelled.

These examples illustrate two important aspects of the operation of the Matching System. First, the Matching System will never price slide an order to avoid an execution. That is, all Post Only orders (*e.g.* CHX Only Post Only) that would remove liquidity from the CHX book will be immediately cancelled. Also, the Matching System will never lock the CHX book. That is, a Post Only offer (bid) shall not be allowed to post opposite the ranked price of a price slid bid (offer) or a resting undisplayed limit bid (offer). In either situation, the incoming Post Only offer (bid) will be immediately cancelled.

The Exchange acknowledges that the immediate cancellation of Post Only orders that would otherwise remove liquidity from the CHX book may result in the Post Only order sender discovering hidden liquidity on the CHX book. However, the Exchange submits that although an order sender may discover that hidden orders exist, there is no way that the Post Only order sender could learn how many shares are available at that price point, without submitting orders that would execute against the hidden interest. Moreover, if there is no resting liquidity to remove from the CHX book, the Post Only order will be posted and may be executed immediately thereafter. Also, with respect to hidden interest that is the result of price sliding (*i.e.* the undisplayed ranked price of a price slid order), it is important to note that the order sender that submitted the price slid order had intended to display the order at a price at least as aggressive as the ranked price and, thus, the fact that a Post Only order sender may discover the hidden interest does not disadvantage the order sender that submitted the price slid order.

With respect to IOC, a CHX Only order marked IOC would only be executed if it were immediately executable in the Matching System. If, however, such an order, upon entry, were in violation of Regulation NMS [53] and/or Rule 201 of Regulation SHO,[54] the CHX Only designation would mandate application of the CHX Only Price Sliding Processes, whereas the IOC designation would mandate immediate cancellation of the order. Given this incompatibility, the Matching System will simply ignore the CHX Only designation and treat the order as a simple limit IOC.[55]

In addition, CHX Only is also incompatible with ISO. Generally, ISOs require an order sender to take affirmative steps to ensure that the market is satisfied prior to executing or posting its order, whereas CHX Only orders that violate Regulation NMS employ NMS Price Sliding to comport the order price with respect to the prevailing market, as detailed above. Specifically, an ISO, by its own terms, obviates the need for NMS Price Sliding, where in submitting an order marked ISO, the order sender is required to satisfy the protected quotations of external markets priced superior to the limit order submitted to the Exchange.[56] This in turn allows the order to execute at the Exchange's BBO. The Matching System would, however, apply NMS Price Sliding and rank the order at the NBB and display the order at the Permitted Price one increment above the NBB. If Short Sale Price Sliding were applicable, the same sell order would be repriced and displayed to the Permitted Price above the NBB. As such, the

[53] 17 CFR 242.610(d).

[54] 17 CFR 242.201.

[55] The CHX Matching System treats an order with incompatible elements differently depending on the order subtype and modifier combination. An incompatibility may result in an order being rejected as a whole or a conflicting element being ignored.

[56] *See supra* note 49.

fundamental difference between an ISO and CHX Only order is that an ISO can execute at the Exchange's BBO, whereas the same order marked CHX Only could not.

Since a CHX Only with an ISO modifier is incompatible, the CHX Matching System will treat the CHX Only ISO as a ''Price-Penetrating ISO.'' [57] That is, the ISO modifier trumps the CHX Only designation. The reasoning behind this treatment is that an order sender who marks an order ISO is representing that it is sending simultaneous orders to other market centers to satisfy the quotations of other markets as required by Rule 600(b)(3) of Regulation NMS. Since the order sender is taking additional steps to satisfy the statutory requirements of an ISO, the Matching System will ignore the CHX Only designation.

These examples clearly show that the proposed CHX Only Price Sliding Processes can promote market liquidity by allowing the CHX Only order type to be ranked and displayed at the most aggressive prices, while maintaining compliance with Regulation NMS [58] and Rule 201 of Regulation SHO.[59] As a result, these proposed rule changes will make the CHX Only order type more attractive to our Participants by increasing fill or execution rates despite fast-paced changes to the NBBO and by increasing the probability of price improvement above displayed bids and offers for inbound orders.

2. Statutory Basis

The Exchange submits that the proposed rule changes to adopt continuous CHX Only Price Sliding Processes for CHX Only orders and to allow orders marked Post Only to be subject to price sliding is consistent with Section 6(b) of the Act in general [60] and furthers the objectives of Section 6(b)(5) in particular,[61] by promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in facilitating transaction in securities, removing impediments, perfecting the mechanisms of a free and open market and, in general, by protecting investors and the public interest. Specifically, by ensuring that all orders marked CHX Only, including Post Only orders, can be price adjusted continuously to reflect the best permissible price without locking or crossing the NBBO, displayed liquidity on the Exchange will be encouraged by improving the chances of order execution and reducing automatic cancellations by the Exchange's Matching System. Consequently, the proposed changes to the CHX Only order type and the Post Only order modifier will benefit Exchange customers by reducing message traffic, improving fill rates and promoting competition among market centers offering similar products and services, which is consistent with the aforementioned objectives of Section 6(b)(5).

In addition, notwithstanding the amendments, the proposed CHX Only Price Sliding Processes and the Post Only order modifier will continue to comport with Rule 610 of Regulation NMS [62] and Rule 201 of Regulation SHO.[63] Specifically, since the proposed CHX Only Price Sliding Processes will ensure that orders are only displayed at permissible prices and that CHX Only Post Only orders are now eligible for price sliding, the proposed rules will be consistent with the mandate of Rule 610(d) of Regulation NMS that requires exchanges to establish, maintain, and enforce rules that require members to reasonably avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.''[64] Moreover, the automated nature of the CHX Only Price Sliding Processes of the CHX Only order type is ''reasonably designed to assure the reconciliation of locked or crossed quotations in any NMS stock.'' [65] Also, since the proposed CHX Only Price Sliding Processes will assist Participants by ensuring that orders, including Post Only orders, are displayed at permissible prices, the proposed rule is reasonably designed to ''prohibit its members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in a NMS stock, or of displaying manual quotations that lock or cross an quotation in any NMS stock disseminated pursuant to an effective national market system plan, other than displaying quotations that lock or cross any protected or other quotation as permitted by an exception contained in its rules established pursuant to paragraph (d)(1) of this section.'' [66] Similarly, the proposed rules will continue to comport with the requirements under Rule 201 of Regulation SHO [67] by ensuring that CHX Only sell short orders, as well as CHX Only Post Only sell short orders, are displayed above the NBB at the time the sell short order is entered, when the short sale price test restriction under Rule 201 of Regulation SHO is in effect for a covered security. That is, the repricing of short sale orders to follow decreases in the NBB will not adversely impact the ability of the proposed rules to reasonably ''prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day.'' [68]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does believe that the proposed rule change will have an impact on competition. However, the Exchange does not believe that the proposed rule change will impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act. To the contrary, the amended CHX Only order type and the proposed CHX Only Price Sliding Processes should act as a positive force for competition by providing an alternative to other similar order types and functionality, such as the BATS ''Display-Price Sliding.'' [69]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

[57] CHX Article 1, Rule 2(aa) (b)(15) defines ''Price-Penetrating ISO'' as ''an order marked as required by SEC Rule 600(b)(30) that is to be executed at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. Orders marked as price-penetrating ISO shall be executed against any eligible orders in the Matching System (including any reserve size or other undisplayed orders, through multiple price points). The Matching System, in executing these orders, shall not take any of the actions described in Rule 5 to prevent an improper trade-through.'' *See also* CHX Article 20, Rule 4(b)(15).

[58] *Id.*

[59] 17 CFR 242.201.

[60] 15 U.S.C. 78f(b).

[61] 15 U.S.C. 78f(b)(5).

[62] 17 CFR 242.610(d).

[63] 17 CFR 242.201.

[64] 17 CFR 242.610(d).

[65] *Id.*

[66] *Id.*

[67] 17 CFR 242.201(b)(1)(i).

[68] *Id.*

[69] *See* BYX Rule 11.9(g).

the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[70] and Rule 19b–4(f)(6) thereunder.[71]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[72] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[73] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to be operative as of March 22, 2013, noting that doing so would allow the Exchange to quickly offer Exchange participants the proposed CHX Only order type and price sliding functionality while ensuring that the Exchange's matching system has been properly tested to ensure a smooth transition to the modified CHX Only order type and Post Only order modifier. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[74] This waiver will allow the Exchange to modify this order type without delay such that is similar to an order type offered by other another exchange.[75] Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of March 22, 2013.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2013–07 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–CHX–2013–07. 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–CHX–2013–07 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05878 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[70] 15 U.S.C. 78s(b)(3)(A).

[71] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[72] 17 CFR 240.19b–4(f)(6).

[73] 17 CFR 240.19b–4(f)(6).

[74] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[75] The CHX-Only order, as modified, is based upon BATS Y-Exchange Rule 11.9(g)(1)(C). *See also* Exchange Act Release No. 67657 (August 14, 2012), 77 FR 50199 (August 20, 2012) (SR–BATS–2010–035). The differences between the proposed rule and the BATS rule are discussed in the Exchange's proposed rule change.

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69083; File No. SR–C2–2013–013]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Regulation NMS Plan To Address Extraordinary Market Volatility

March 8, 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 March 7, 2013, C2 Options Exchange, Incorporated (''C2'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its rules to address certain option order handling procedures and quoting obligations on the Exchange after the implementation of the market wide equity Plan to Address Extraordinary Market Volatility (the ''Plan'').

The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to update Exchange rules to correspond with the Plan. Specifically, the Exchange is proposing to make proposed changes to Exchange Rules Rule 6.10, ''Order Types Defined,'' 6.11, ''Openings (and sometimes Closings),'' Rule 6.13, ''Complex Order Execution,'' Rule 6.15, ''Obvious Error and Catastrophic Errors,'' Rule 6.18, ''HAL,'' Rule 6.39, ''Equity Market Plan to Address Extraordinary Market Volatility,'' Rule 8.5, ''Obligations of Market-Makers, Rule 8.17, ''DPM Obligations,'' and Rule 8.19, ''DPM Participation Entitlements.'' The Exchange believes these modifications will protect investors because when an underlying security is in a limit or straddle state (collectively referred to in this filing as a ''limit up-limit down state''), there will not be a reliable price for the security to serve as a benchmark for the price of the option. In addition, the width of the markets might be compromised and, thus, the quality of execution for retail customers. The Plan is more fully explained below.

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, the Exchange, in conjunction with the other national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Securities Exchange Act of 1934 (the ''Act'').[3] The Plan is primarily designed to, among other things, address extraordinary market volatility in NMS stocks, protect investors, and promote fair and orderly markets. The Plan provides for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of specified price bands, as defined in Section I(N) of the Plan. These requirements would be coupled with trading pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or monetary gaps of liquidity).

The Plan was filed on April 5, 2011 by the Participants for publication and comment.[4] The Participants requested the Commission approve the Plan as a one-year pilot. On May 24, 2012, the Participants filed an amendment to the Plan which clarified, among other things, the calculation of the reference price, as defined in Section I(T) of the Plan, potential for order type exemption, and the creation of an Advisory Committee.[5] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[6]

Under the Plan, Participants are required to adopt certain rules in order to comply. Specifically, Section VI of the Plan sets forth the limit up-limit down requirements of the Plan, and in particular, that all trading centers in NMS Stocks, including both those operated by the Participants and those operated by member of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the lower price band or above the upper price band for an NMS Stock, consistent with the Plan. Price Bands will be calculated by Securities Information Processors (''SIPs'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act. As proposed, and approved, the Plan would be implemented, as a one year pilot program, in two phases.[7] Phase I would become effective on April 8 and apply to Tier I NMS Stock per Appendix A of the Plan, and Phase II would become effective six months later, or earlier if announced by the SIPs 30 days prior, and would apply to all NMS Stocks.

Under the Plan, when one side of the market for an individual security is outside the applicable price band, the SIPs will be required to disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable Price Band, the market for an individual security will enter a limit state. Trading for that security will exit the limit state if, within 15 seconds of entering the limit state, all limit state quotations were executed or cancelled. If the market does not exit a limit state within 15 seconds, then the primary listing exchange will declare a five-minute trading pause, which will be applicable to all markets trading the security.

Though the Plan is primarily designed for equity markets, the Exchange believes it will, indirectly, potentially impact the options markets as well. Thus, as stated above, the Exchange is proposing to amend its rules to ensure the option markets are not harmed as a result of the Plan's implementation. As such, the Exchange is proposing to amend various rules to reflect such changes. The Exchange believes such changes will protect participants, the Exchange and investors in general.

First, the Exchange is proposing to add Rule 6.39 to codify the changes throughout the Exchange's rules. The Exchange is proposing to add the title to ''Equity Market Plan to Address Extraordinary Market Volatility'' and add text. Rule 6.39 will define the Plan as it applies to the Exchange. In addition, the proposed rule change will describe the location of the other rule changes associated with the Plan. In essence, the proposed changes to Rule 6.39 will serve as a roadmap for the Exchange's universal changes due to the implementation of the Plan. The proposed rule changes will list changes to Exchange order types, order handling, obvious error, and market-maker quoting obligations that the Exchange is proposing to make in connection with the implementation of the Plan. These rule changes are more thoroughly described in various sections of the Exchange Rulebook, but having one place referencing all rules associated with the Plan will serve to better protect investors by making the other rules easily located. The Exchange believes the proposed changes to Rule 6.39 will describe to Trading Permit Holders (''TPHs''), and other participants, where to find the changes associated with the Plan and will, thus, attempt to maintain a more orderly market.

Next, the Exchange is proposing to modify its opening procedures under Rule 6.11, ''Openings (and sometimes Closings).'' The Exchange is proposing to add an Interpretation and Policy .03 to clarify that if the underlying security for a class of options enters into a limit up-limit down state when the class moves to opening rotation, any market orders entered that trading day currently opening, prior to the opening of that class, will be cancelled. The Exchange believes this change is consistent with cancelling market orders in general during a limit up-limit down period as described in more detail below. The Exchange further believes this proposed change will help the Exchange to

[3] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[4] *Id.*

[5] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[6] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[7] *Id.*

protect its TPHs from executing skewed orders during limit up-limit down periods.

Next, the Exchange is proposing to modify Exchange Rule 6.18, ''HAL.'' Exchange Rule 6.18 currently governs the operation of HAL, a feature within the System that provides automated order handling in designated classes trading on the System for qualifying orders that are not automatically executed by the System. The Exchange determines the eligible order size, eligible order types, eligible origin code (i.e. public customer orders, non-Market-Maker broker-dealer orders and Market-Maker broker-dealer orders), and classes in which HAL is activated.[8] When the Exchange receives a qualifying order that is marketable against the National Best Bid or Offer (''NBBO'') and/or the Exchange's best bid or offer (''BBO''),[9] HAL electronically exposes the order[10] at the NBBO price to allow Market-Makers appointed in that class, as well as all TPHs acting as agent for orders, at the top of the Exchange's book in the relevant series (or all TPHs if allowed by the Exchange)[11] to step-up to the NBBO price.

Because the underlying security of the option in HAL affects the pricing of the eventually executed order, the Exchange is proposing to make changes to Rule 6.18 to reflect the implementation of the Plan. More specifically, the Exchange is proposing to amend Rule 6.18 to modify the behavior of HAL of a market order while the underlying security of the option is in a limit up-limit down state. If an underlying security shall enter a limit state while a HAL of a market order is in process, the auction will end early, upon the entering of the state, and any unexecuted portion of a market order shall be cancelled. The Exchange believes the proposed rule changes will best protect the TPH by ensuring it does not receive an executed order with an unanticipated price due to the change in the underlying security. In addition, by ending the auction early, the Exchange is providing a better chance for the TPH to get its order executed as it is in the TPH's interest for an earlier execution versus a later one.

Next, the Exchange is proposing to modify how an electronic complex order request for responses (''RFR'') auction (''COA'') will operate while the underlying security of at least one of the options has entered a limit state. Exchange Rule 6.13(c) currently describes the general COA process. Generally, on a class-by-class basis, the Exchange may activate COA, which is a process by which eligible complex orders[12] are given an opportunity for price improvement before being booked in the electronic complex order book (''COB'') or once on a PAR workstation. On receipt of a COA-eligible order and request from a TPH representing the order that it be COA'd, the Exchange will send an RFR message to all TPHs who have elected to receive RFR messages.[13] Each Market-Maker with an appointment in the relevant option class and each TPH acting as agent for orders resting at the top of the COB in the relevant options series may then submit responses to the RFR message during the Response Time Interval.[14] The Exchange is proposing to add to the COA rule that if, during COA, the underlying security of a market order enters a limit up-limit down state, the COA will end upon the entering of that state and the remaining portion of the order will cancel.

Next, the Exchange is proposing to amend Exchange Rule 6.15 relating to the nullification and adjustment of options transactions. Under the current rule, an Obvious Pricing Error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by a specified amount. For purpose of the rule, the ''Theoretical Price'' of an option series is currently defined, for series traded on at least one other options exchange, as the last national best bid price with respect to an erroneous sell transaction and the last national best offer price with respect to an erroneous buy transaction, just prior to the trade. If there are no quotes for comparison, designated help desk personnel[15] will determine the Theoretical Price.

Because the theoretical price may be unreliable due to the underlying security entering a limit state, the Exchange is proposing to amend the Exchange obvious error rules to provide that the Exchange may not nullify or adjust trades when the underlying security is in a limit up-limit down state. The Exchange is also proposing to add language specifying that transactions in options that overlay a security that is in a limit state may, however, be reviewed on an Exchange motion. The Exchange is also proposing to add language to specify that this provision will be on a one year pilot basis to coincide with the Plan. The Exchange will provide the Commission with data and analysis during the duration of this pilot as requested.[16] The Exchange believes this will best protect the market because it allows limit orders to be executed on the Exchange while the underlying securities are in limit states regardless of the calculated theoretical price.

In addition, the Exchange believes the proposed rule change would protect against TPHs getting a potential second look at transactions that happened during limit states that could be unfair to other participants. The proposed rule change would encourage added liquidity on the Exchange as the proposed changes would help to ensure that limit orders that are filled during a limit up-limit down state would have certainty of execution. By allowing the Exchange to continue to review such transactions on their own motion, the Exchange is further attempting to protect investors and maintain an orderly market. The Exchange believes that the combination of encouraging TPHs to participate on the market and allowing a safeguard to erroneous trades will provide the best solution during the pilot of the Plan.

Next, the Exchange is proposing to modify Rule 6.10 and 6.13 and, more specifically, how certain Exchange order types will be handled while the underlying security of such orders enters into a limit up-limit down state. The proposed rule change will, among

[8] Rule 6.18.

[9] HAL will not electronically expose the order if the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order.

[10] The duration of the exposure period may not exceed one second. Rule 6.18(c) describes the manner in which an exposed order is allocated under HAL, and Rule 6.18(d) lists the circumstances in which an exposure period would terminate early.

[11]

[12] An eligible complex order, referred to in Rule 6.13 as a ''COA-eligible order,'' means a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type and complex order origin type (*i.e.* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange). All determinations by the Exchange on COA-eligible order parameters are announced to Trading Permit Holders by Regulatory Circular. *See* Rule 6.18(c)(1)(B) and Interpretation and Policy .01 to Rule 6.18.

[13] *See* Rule 6.18(c)(3)(B). The RFR message will identify the component series, the size of the COA-eligible order and any contingencies, but will not identify the side of the market.

[14] *See* Rule 6.18(c)(3). A ''Response Time Interval'' means the period of time during which responses to the RFR may be entered, the length of which is determined by the Exchange on a class-by-class basis but may not exceed three seconds. *See* Rule 6.18(c)(3)(B).

[15] *See* Exchange Rule 6.15(a)(3)(B).

[16] Finally, as an administrative change, the Exchange is proposing to eliminate a sentence referring to an Interpretation and Policy (.08) that no longer exists. The proposed provision will be the new Interpretation and Policy (.08) to Rule 6.15.

other things, address how market orders,[17] market-on-close,[18] stop orders,[19] and stock option orders [20] will function on the Exchange upon the implementation of the Plan. More specifically, the Exchange is proposing to add language to clarify that: (a) Market orders will be returned during limit up-limit down states, (b) market-on-close orders will not be elected if the underlying security is in a limit up-limit down state, (c) stop orders will be held while the underlying security is in a limit up-limit down state, and (d) stock-option orders will only execute if the calculated stock price is within the permissible Price Bands.[21] In addition, during a limit up-limit down state, if a message is sent to replace a limit order with a market order, the resting limit order will be cancelled and the replaced market order will also be cancelled.

When a stock is in a limit or straddle state, while options trading will continue, there will not be a reliable price for a security to serve as a benchmark for the price of the option. In addition, without a reliable underlying stock price, there is an enhanced risk of errors and improper executions. With these concerns in mind, the Exchange believes that adding a level of certainty for TPHs will encourage participation on the Exchange whilst the underlying securities are in limit up-limit down states. Thus, the Exchange believes handling these certain orders in this way will best protect the investor after the implementation of the Plan by not allowing execution at unreasonable prices due to the shift in the stock prices.

Finally, the Exchange is proposing to eliminate all market maker obligations for options in which the underlying security is in a limit state while the underlying security in is in the limit up-limit down state. Currently, Exchange Rules 8.5 and 8.17 impose certain obligations on Market-Makers and DPMs, respectively, including obligations to provide continuous quotes as follows: [22]

- Rule 8.5 requires that Market-Makers provide a continuous two-sided market in 60% of the non-adjusted option series of the Market-Maker's appointed class that have a time to expiration of less than nine months;
- Rule 8.17(a)(1) requires DPMs to provide continuous quotes in at least the lesser of 99% or 100% minus one call-put pair [23] of the non-adjusted option series of each class allocated to it.

Exchange Rule 8.19 provides that DPMs generally will receive the participation entitlements in their assigned classes when quoting at the best price if they satisfy their obligations and other conditions set forth in the rules. Specifically, Rule 8.19 provides that the DPM participation entitlement will be 50% when there is one Market-Maker also quoting at the best price on the Exchange and 40% when there are two Market-Makers also quoting at the best price on the Exchange.[24]

Because prices may be skewed due to the underlying security being in a limit up-limit down state, the Exchange is proposing to eliminate all Market-Maker quoting obligations in series of options that the underlying security is currently in a limit up-limit down state. Because of the direct relationship between an options price and the price of the associated underlying security, the Exchange believes eliminating all Market-Maker obligations in connection with the implementation of the Plan is the most effective way to ensure the options markets will not be compromised. Because a bid or offer of an underlying security may not be executable due to a limit or straddle state, the ability to hedge the purchase or sale of an option may not be possible or, in the least, is at risk. Because of this reason, the Exchange is anticipating that Exchange Market-Makers will be forced to change behaviors. In addition, the Exchange believes other options markets will be implementing similar changes. In an effort to protect the investors in the options market while the underlying security is in a limit up-limit down state, the Exchange believes that eliminating quoting obligations is the more effective way for this protection.

The Exchange, however, is proposing that Market-Makers may still receive participation entitlements pursuant to the proposed rules in all series in their assigned classes in which they are quoting, even in series in which they are not required to provide continuous electronic quotes under the Exchange Rules. Market-Makers already receive participation entitlements in series they are not required to quote. For example, a DPM is currently required to provide continuous quotes in at least 99% of the non-adjusted option series or 100% of the non-adjusted series minus one call-put pair of each option class allocated to it for 90% of the trading day.[25] If the DPM elects to quote in 100% of the non-adjusted series in an option class allocated to it, it will receive a participation entitlement in all of those series when quoting at the best price, including the 1% of the series in which it is not required to quote in. Thus, under the proposed rule change, the market would continue to function as it does now. The Exchange believes this benefit is appropriate, as it incentivizes Market-Makers to quote in as many series as possible in their appointed classes, even those series in which the Rules do not require them to continuously quote. Thus, under the proposed rule change, the market would continue to function as it does now with respect to how entitlements are allocated to Market-Makers. The Exchange believes this benefit is appropriate, as it incentivizes Market-Makers to quote in as many series as possible in their appointed classes, even those series in which the underlying security has entered into a limit up-limit down state. The Exchange is attempting to better encourage Market-Makers to quote though they will not be obligated to. If they do choose to quote, the Exchange believes they should be entitled to receive the Entitlement for such quoting as appropriate.

The Exchange believes the combination of these modifications will protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option.

[17] *See* Exchange Rule 6.10 which defines a market order as ''an order to buy or sell a stated number of options contracts at the best price available at the time of execution.''

[18] *See* Exchange Rule 6.10(c)(2) which defines a market-on-close order designation as an order ''to be executed as close as possible to the closing bell, or during the closing rotation, and should be near to or at the closing price for the particular series of option contracts.

[19] *See* Exchange Rule 6.10(c)(3) which defines a stop order contingency to an order as one that ''to buy or sell when the market for a particular option contract reaches a specified price on the Exchange.''

[20] *See* Exchange Rule 6.13(a)(2) which defines a stock-option order as ''an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock * * * coupled with the purchase or sale of options contract(s) on the opposite side of the market.''

[21] If the calculated price of a stock-option order is not within the permissible Price Bands, the stock-option order will be routed for manual handling.

[22] For purposes of Rules 8.5(a)(1), and 8.17(a)(1), ''continuous'' means 90% of the time. If a technical failure of limitation of the System prevents a Market-Maker from maintaining timely and accurate quotes in a series, the duration of such failure will not be included in the 90% determination.

[23] *See* Rule 8.17(a)(1) which defines a ''call-up pair'' as ''one call and one put that cover the same underlying instrument and have the same expiration date and exercise price.''

[24] The participation entitlements of DPMs are based on the number of contracts remaining after all public customer orders in the book at the best price on the Exchange have been satisfied. Additionally, a DPM may not be allocated a total quantity greater than the quantity for which the DPM is quoting at the best price. *See* Rules 8.19(b)(1)(B) and (C).

[25] *See* Rule 8.17(a).

In addition, the width of the markets might be compromised and, thus, the quality of execution for retail customers. At the same time, the Exchange believes the proposed rule change will create more certainty on the options markets encouraging more investors to participate despite the changes associated with the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[26] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [27] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed changes will be in accordance with the Act as they are merely intended to ensure the options markets will continue to remain just and equitable with the implementation of the Plan which is intended to reduce the negative impacts of a sudden, unanticipated price movement in NMS stocks. The proposed rule changes would promote this intention in the options markets while protecting investors participating there. In addition, similar rule changes will be adopted by other markets in the national market system in a coordinated manner promoting the public interest. Creating a more orderly market will promote just and equitable principles of trade by allowing investors to feel more secure in their participation in the national market system after the implementation of the Plan.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intramarket competition because it applies to all TPHs equally. The Exchange does not believe the proposed changes will impose any burden on intermarket competition as the changes are merely being made to protect investors with the implementation of the Plan. In addition, the propose changes will provide certainty of treatment and execution of options orders during periods of extraordinary market volatility.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–C2–2013–013 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 No. SR–C2–2013–013. 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 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 No. SR–C2–2013–013 and should be submitted on or before March 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05885 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69087; File No. SR–NSX–2013–09]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Rules To Comply With the Requirements of the Plan To Address Extraordinary Market Volatility Submitted to the Commission Pursuant to Rule 608 of Regulation NMS

March 8, 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 March 1, 2013, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Rules to comply with the National Market System Plan, also known as Limit Up/Limit Down, established pursuant to Rule 608 of the Exchange Act, to address extraordinary market volatility (the ''Regulation NMS Plan to Address Extraordinary Market Volatility'' or ''Plan'').[3] Specifically, the Exchange proposes to: (1) Adopt new Exchange Rule 11.24 incorporating the requirements of the Regulation NMS Plan to Address Extraordinary Market Volatility into the Exchange Rules by discussing how the Exchange will handle orders and halt trading pursuant to the Plan; (2) amend Exchange Rule 11.11 to discuss how undisplayed ''pegged'' orders would be handled under proposed Exchange Rule 11.24; (3) amend Exchange Rule 11.15 to explicitly state that orders must be executed in accordance with proposed Exchange Rule 11.24; and (4) amend Exchange Rule 11.20 so that the portion addressing trading pauses conform with the Plan. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4] The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (1) Adopt new Exchange Rule 11.24 incorporating the requirements of the Regulation NMS Plan to Address Extraordinary Market Volatility into the Exchange Rules by discussing how the Exchange will handle orders and halt trading pursuant to the Plan; (2) amend Exchange Rule 11.11 to discuss how undisplayed ''pegged'' orders would be handled under proposed Exchange Rule 11.24; (3) amend Exchange Rule 11.15 to explicitly state that orders must be executed in accordance with proposed Exchange Rule 11.24; and (4) amend Exchange Rule 11.20B so that the provisions relating to Trading Pauses [5] conform with the Plan.

Summary

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the national securities exchanges that list and trade equity securities and the Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures that are designed to restore investor confidence in the markets by reducing the potential for excessive volatility. The measures adopted include pilot plans for stock-by-stock trading pauses [6] and related changes to the equities market clearly erroneous execution rules,[7] and more stringent equity market maker quoting requirements.[8] On May 31, 2012, the Commission approved the Plan, on a pilot basis.[9] In addition, the Commission approved changes to the equity market-wide circuit breaker rules on a pilot basis to coincide with the pilot period of the Plan.[10]

The Plan is designed to prevent trades in NMS Stocks from occurring outside of specified Price Bands. As described more fully below, the Price Bands are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.[11]

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[12] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[13] All trading centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Appendix A to Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Unless otherwise specified, capitalized terms used in this rule filing are based on defined terms in the Plan.

[6] *See e.g.,* NSX Rule 11.20B.

[7] *See e.g.,* NSX Rule 11.19.

[8] *See e.g.,* NSX Rule 11.8(a)(1)(B)(iv) and (v).

[9] *See* Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012) (Order approving, on a Pilot Basis, the National Market System Plan to Address Extraordinary Market Activity).

[10] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SRFINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SRNYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[11] The Exchange is a Participant in the Plan.

[12] See Section (V)(A) of the Plan.

[13] See Section VI(A) of the Plan.

Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[14]

Trading in an NMS Stock immediately enters a Limit State if the National Best Bid/Offer equals but does not cross the Upper (Lower) Price Band.[15] Trading for an NMS stock exits in a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the LULD Plan, which would be applicable to all markets trading the security.[16]

In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS Stock.

Proposed Exchange Rule 11.24, Limit Up-Limit Down

Under the Plan, the Exchange is required to establish, maintain, and enforce written policies and procedures reasonably designed to comply with the Limit Up-Limit Down and Trading Pause requirements of the Plan. The Exchange, therefore, proposes to adopt new Exchange Rule 11.24, Limit Up-Limit Down, to address the treatment of certain orders on the Exchange in order to prevent executions outside the Price Bands and to comply with the requirements of the Plan.

Implementation Schedule

To coincide with the effective date of the Regulation NMS Plan to Address Extraordinary Market Volatility, the Exchange proposes to add Exchange Rule 11.24(a) the Exchange will implement the proposed rule change as a one-year pilot program in two Phases: Phase I of the Plan implementation will begin on April 8, 2013, and apply to select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan, with full Phase I implementation for all Tier I NMS Stocks completed three months later. Phase II of the Plan will commence six months after April 8, 2013 and apply to all remaining NMS Stocks (except rights and warrants).

The Exchange proposes to add Exchange Rule 11.24(b)(1) to define that the ''Plan'' means the Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012), as it may be amended from time to time. In addition, proposed Rule 11.24(b)(2) provides that all capitalized terms, not otherwise defined in this Rule, shall have the meanings set forth in the Plan or Exchange Rules. The Exchange proposes to add Rule 11.24(c) to state that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

The Exchange proposes to add Rule 11.24(d) to provide that member organizations shall comply with the applicable provisions of the Plan. The Exchange believes that this requirement will help ensure the compliance by its members with the provisions of the Plan as required pursuant to Section II(B) of the Plan.[17]

Order Execution and Re-Pricing

The Exchange also proposes to add Exchange Rule 11.24(e) explicitly stating that the Exchange will not execute or display orders outside of a specified Price Band for an NMS Stock during Regular Trading Hours, unless specifically exempted from the Plan.[18] The Exchange believes that this requirement is reasonably designed to help ensure the compliance with the limit up-limit down and trading pause requirements specified in the Plan, by preventing executions outside the Price Bands as required pursuant to Section VI(A)(1) of the Plan.[19]

Depending on the User's[20] instruction, however, under proposed Rule 11.24(f)(1), any incoming limit-priced order (other than an IOC order) to buy (sell) that is priced above (below) the upper (lower) Price Band shall be repriced to the upper (lower) Price Band. Exchange systems shall also re-price the resting limit-priced interest to buy (sell) to the upper (lower) Price Band if the Price Band moves and the price of the resting limit-priced interest to buy (sell) moves above (below) the upper (lower) Price Band. Any interest that is re-priced pursuant to this Rule shall retain the time stamp of original order entry. Proposed Exchange Rule 11.24(f)(2), would permit a User to instruct the Exchange, on an order-by-order basis, to not re-price its order to the upper or lower Price Band. In such cases, the order will only execute against orders posted on the NSX Book resting within the Price Bands. Any unexecuted portion will be cancelled if it would result in an execution outside of the Price Bands. Under proposed Rule 11.24(f)(3), should the Price Band move so that a previously accepted limit-priced order is now priced outside of the Price Band, the order will either be re-priced to the new Price Band or cancelled if the User instructed the Exchange not to re-price its order. Under proposed Exchange Rule 11.24(g), an incoming limit-priced order (other than an IOC order) to sell (buy) that is priced below (above) the upper (lower) Price Band will be accepted by the Exchange and eligible for inclusion in the Exchange's Protected BBO.[21] However, the Exchange will not execute such orders until the Price Band moves in such a way that the order is now priced within the Price Band.

In addition, the Exchange proposes the following provisions regarding the re-pricing and/or cancelling of certain trading interest:

• *Immediate-or-Cancel Orders.* Under Exchange Rule 11.11(b)(1), an ''Immediate-or-Cancel (''IOC'') Order'' is a ''limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled.''[22] Under the proposed Exchange Rule 11.24(f), the Exchange will accept an IOC Order that is priced, explicitly or not, outside of the Price

[14] See Section VI(A)(3) of the Plan.

[15] See Section VI(B)(1) of the Plan.

[16] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

[17] *See* Section II(B) of the Plan.

[18] Under Exchange Rule 1.5(R), ''Regular Trading Hours'' means between 9:30 a.m. and 4:00 p.m. Eastern Time.

[19] *See* Section II(B) of the Plan.

[20] Under Exchange Rule 1.5(U), ''User'' means any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 11.9.

[21] Under Exchange Rule 1.5(P), ''Protected BBO'' means the better of either the protected national best bid or offer or the displayed top-of-book.

[22] IOC Orders are not eligible for routing away pursuant to Exchange Rule 11.15.

Band. However, the IOC Order will only execute against orders posted on the NSX Book resting within the Price Band. Any unexecuted portion of an IOC Order will be cancelled if it would result in an execution outside of the Price Band.

• *Market Orders.* Under Exchange Rule 11.11(a)(1), a ''Market Order'' is ''an order to buy or sell a stated amount of a security that is to be executed at the best price obtainable when the order reaches the Exchange.'' [23] Under proposed Rule 11.24(g), the Exchange will execute Market Orders at or better than the opposite side of the Price Band (i.e., a sell order to the lower Price Band and a buy order to the upper Price Band). Any unexecuted portion of a Market Order will be cancelled if it would result in an execution outside of the Price Band.

Pegged Orders Under Exchange Rule 11.11(c)(2)(A)

Under Exchange Rule 11.11(c)(2)(A), a ''Zero Display Reserve Order'' is a Reserve Order [24] with zero display quantity. The price of a Zero Display Reserve Order may be set (''pegged'') to track the buy-side of the Protected Best Bid or Offer (''BBO''),[25] the sell-side of the Protected BBO, or the midpoint of the Protected BBO. A pegged Zero Display Reserve Order that tracks the midpoint is defined as a Midpoint Peg Zero Display Reserve Order. Exchange Rule 11.11(c)(2)(A) also defines a ''Market Peg'' order as ''[a] pegged Zero Display Reserve Order which tracks the inside quote of the opposite side of the market and a pegged Zero Display Reserve Order that tracks the inside quote of the same side of the market is defined as a ''Primary Peg.''

The Pegging of a Market Peg, Primary Peg or a Midpoint Peg Zero Display Reserve Order could result in the order being re-priced to a price outside of the Price Bands. To avoid such an occurrence, the Exchange proposed under Exchange Rules 11.11(c)(2)(A) and 11.24(h) that Market Peg or Midpoint Peg Zero Display Orders that would be ''pegged'' to a price outside of the Price Bands to instead be ''pegged'' to the upper or lower Price Band, respectively (i.e., a buy order to the upper Price Band and a sell order to the lower Price Band). In accordance with proposed Exchange Rule 11.24(d), a User may indicate to the Exchange, on an order-by-order basis, to not peg the order to the upper or lower Price Band, respectively. In such case, the System will reject the order if it would result in a price outside of the Price Band.

The following examples describe how Market Peg, Primary Peg and Midpoint Peg Zero Display Orders would be repriced under the proposed Exchange Rule 11.11(c)(2)(A) and 11.24(g). The Exchange's Protected BBO is 26.00 × 27.00 and Price Bands are 26.51 × 27.50.

• A Market Peg buy order would be pegged to the opposite side of the Exchange Protected BBO unless pegging to the upper Price Band provides the User a better price. In this example, the Exchange would price the order at 27.00.

• A Market Peg sell order would be pegged to the opposite side of the Exchange's Protected BBO unless pegging to the lower Price Band provides the User a better price. In this example, the Exchange would price the order at 26.51.

• A Primary Peg buy order would be pegged to the same side of the Exchange's Protected BBO unless pegging to the upper Price Band provides the User a better price. In this example, the Exchange would price the order at 26.00.

• A Primary Peg sell order would be pegged to the same side of the Exchange's Protected BBO unless pegging to the lower Price Band provides the User a better price. In this example, the Exchange would price the order at 27.00.

• A Midpoint Peg would be pegged to the midpoint of the Exchange's Protected BBO unless pegging to the lower Price Band (for a sell order) or pegging to the upper Price Band (for a buy order) provides the User with a better price. In this example, midpoint buy orders would be priced at 26.50; midpoint sell orders would be priced at 26.51.

The Exchange believes these provisions are reasonably designed to prevent executions outside the Price Bands as required by the Limit Up-Limit Down and Trading Pause requirements specified in the Plan. The Exchange believes that allowing a trading interest that would otherwise execute outside the Prices Bands to re-price and keep its original time stamp helps to ensure that a trading interest retains its priority while preventing executions in violation with the Limit Up-Limit Down and Trading Pause requirements. The Exchange notes that retention of an original timestamp, when an interest is re-priced, occurs only under the operation of this Rule in order to prevent executions outside of the Price Bands and to comply with the new Plan. The Exchange believes that adding certainty to the treatment and priority of a trading interest in these situations will encourage market participants to continue to provide liquidity to the Exchange, and thus promoting a fair and orderly market.

The Exchange proposes Rule 11.24(k) that provides that the Exchange shall route orders to an away market in accordance with Rule 11.15(a)(ii) regardless of whether the away market is displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band. The Exchange believes that this provision is reasonable since the Price Bands may move while the order is en route thereby permitting the away market center to execute the order in compliance with the Limit Up-Limit Down and Trading Pause requirements specified in the Plan.

Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

Consistent with the Plan's requirements for the Exchange to establish, maintain, and enforce policies and procedures that are reasonably designed to comply with the Trading Pause requirements specified in the Plan, the Exchange also proposes to amend the Rules regarding Trading Pauses to correspond with the Plan. The Exchange proposes to provide that during Phase 1 of the Plan, a Trading Pause in Tier 1 NMS Stocks subject to the requirements of the Plan, shall be subject to the Plan requirements and Exchange Rule 11.20(b); a Trading Pause in Tier 1 NMS Stocks not yet subject to the requirements of the Plan shall be subject to the requirements in paragraphs (a)–(f) of this Rule; and a Trading Pause in Tier 2 NMS Stocks shall be subject to the requirements set forth in Exchange Rule 11.20(a)(1)(B)–(f). The proposed change will allow the Trading Pause requirements in Exchange Rule 11.24(a)(1) to continue to apply to Tier 1 NMS Stocks during the beginning of Phase I until they are subject to the Plan requirements. Once the Plan has been fully implemented and all NMS Stocks are subject to the Plan, a Trading Pause under the Plan shall be subject to Exchange Rule 11.20(b). In addition, the Exchange proposes to replace references to ''Circuit Breaker Security'' with

[23] Under Exchange Rule 11.11(a)(1), a market order that is designated as ''NSX Only'' will be cancelled if when reaching the Exchange, it cannot be executed in accordance with Rule 11.15(a)(i) on the System. Market orders that are not designated as ''NSX Only'' and that cannot be executed in accordance with Rule 11.15(a)(i) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.15.

[24] Under Exchange Rule 11.11(c)(2), a ''Reserve Order'' is a ''limit order with a portion of the quantity displayed (''display quantity'') and with a reserve portion of the quantity (''reserve quantity'') that is not displayed.''

[25] Exchange Rule 1.5. ''Protected BBO'' is defined as ''the better of the following: (a) [t]he Protected NBBO or (b) [t]he displayed Top of Book.''

''security'' to coincide with the terms of the Plan. These proposed changes are designed to comply with Section VIII of the Plan to ensure implementation of the Plan's requirements.[26]

In addition, the Exchange proposes Rule 11.20(g) that provides that the Exchange may declare a Trading Pause for an NMS Stock listed on the Exchange when (i) the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State; and (ii) trading in that NMS Stock deviates from normal trading characteristics. An Officer of the Exchange, or other senior level employee, may declare such Trading Pause during a Straddle State if such Trading Pause would support the Plan's goal to address extraordinary market volatility.[27] The Exchange believes that this provision is reasonably designed to comply with the requirements of Section VII(a)(2) of the Plan.[28]

Exchange Rule 11.15, Order Execution

Under Exchange Rule 11.15, any execution to occur during Regular Trading Hours must be priced equal to or better than the Protected NBBO,[29] unless the order is marked and an Intermarket Sweep Order [30] or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS of the Act. The Exchange proposes to amend Exchange Rule 11.15 to also require that the order must be executable in accordance with Exchange Rule 11.24, Limit Up-Limit Down. This change is designed to add consistency to Exchange Rules and to explicitly require that orders be executed in accordance with Exchange Rule 11.24, which set forth the Plan's requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Exchange Act.[31] In addition, the rule furthers the objective of Section 6(b)(5) of the Exchange Act [32] by promoting just and equitable principles of trade, removing impediments to, and perfecting the mechanisms of, a free and open national market system while protecting investors and the public interest. The proposal furthers this cause by ensuring that the Exchange systems will not display or execute a trading interest outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan.

The proposal will also ensure that a trading interest on the Exchange is either re-priced to maintain priority, or canceled in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Specifically, the proposal will help allow market participants to continue to trade NMS Stocks within Price Bands in compliance with the Plan and with certainty on how varying orders and trading interests will be treated. Ultimately, by reducing uncertainty regarding the treatment and priority of a trading interest with the Price Bands, market participants will be encouraged to continue to provide liquidity during times of extraordinary market volatility that occur during Regular Trading Hours.

The proposal also promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system by ensuring that orders in NMS Stocks are not routed to other exchanges in situations where an execution may occur outside Price Bands, and thereby is reasonably designed to prevent an execution outside the Price Bands in a manner that promotes compliance with the limit up-limit down and trading pause requirements specified in the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All national securities exchanges are required to establish, maintain, and enforce policies and procedures reasonably designed to comply with the requirements of the Plan. Every member of those exchanges, including ETP Holder of the Exchange, are subject to those procedures and prevented from executing an order in an NMS Stock outside of the Price Bands prescribed by the Plan. The Plan also sets forth uniform requirements under which each exchange is to halt trading in the event a NMS Stock does not exit a Limit State in a timely manner. Therefore, the Exchange believes the proposed rule change does not 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 proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [33] and Rule 19b–4(f)(6) thereunder.[34] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2013–09 on the subject line.

[26] *See* Section VIII of the Plan.

[27] The Exchange will develop written policies and procedures to determine when to declare a Trading Pause in such circumstance.

[28] *See* Section VII(a)(2) of the Plan.

[29] Under Exchange Rule 1.5(P), ''Protected NBBO'' is defined as ''the national best bid or offer that is a protected quotation.''

[30] Rule 600(b)(30) of Regulations NMS. 17 CFR 242.600(b)(30).

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–NSX–2013–09. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NSX–2013–09 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05892 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69080; File No. SR–NYSEArca–2013–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules Governing Order Format and System Entry Requirements

March 8, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 5, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend rules governing Order Format and System Entry Requirements. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 6.67(c) by revising the requirements for entering an order into the Electronic Order Capture System (''EOC''). In addition, the Exchange proposes to delete all references pertaining to the Electronic Tablet, a decommissioned Exchange order entry mechanism.

Order Format and System Entry Requirements

EOC is the Exchange's floor-based electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions entered and executed on the floor of the Exchange. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between booth terminals and the Floor Broker work stations and hand held applications. The EOC was developed by the Exchange to fulfill one of the undertakings contained in the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (''Order'').[4] Specifically, the EOC is intended to respond to Section IV.B.e.(v) of the Order, which requires, among other things, that the Exchange incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation.

In order to comply with the terms of Rule 6.67(c)(1), and thus be in compliance with the Order, Floor Brokers and employees of floor brokerage firms (collectively ''Floor Brokers'') upon receiving an order for execution on the Exchange must immediately, prior to representation in the trading crowd, record the details of the order into EOC. This process, commonly referred to the ''systemization'' of an order, creates an accurate time-sequenced record of orders on the Exchange.

The Exchange has prescribed certain data elements that must be entered into the EOC before an order may be represented in the Trading Crowd. These data elements, as contained in Rule 6.68—Record of Orders, include:

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282.

(1) CMTA Information and the name of the clearing OTP Holder or Firm; [5] (2) options symbol, expiration month, exercise price and type of options; (3) side of the market and order type; [6] (4) quantity of options; (5) limit or stop price or special conditions; (6) opening or closing transaction; (7) time in force; (8) account origin code; [7] and (9) whether the order was solicited or unsolicited. The Exchange may, from time to time, also require additional information if needed. The remaining data elements prescribed in Rule 6.68 are to be recorded as the events occur and/or during trade reporting procedures.

The Exchange now proposes to incorporate into the text of Rule 6.67(c) specific data elements required for the proper systemization of an order. The Exchange proposes that in order to meet the requirements for the proper systemization of an order Floor Brokers will be required to enter into the EOC: (i) The option symbol; (ii) the expiration date of the option; [8] (iii) the exercise price; (iv) buy or sell with applicable limit or stop price or special instructions; (v) call or put; (vi) the quantity of contracts; (vii) the name of the clearing OTP Holder or OTP Firm; and (viii) such other information as may be required by the Exchange from time to time. Any additional information with respect to the order including those data elements that [sic] found in Rule 6.68 that pursuant to this proposal will no longer be required at the time of systemization, shall be recorded contemporaneously upon receipt which may occur after the representation and execution of the order. The proposed order entry requirements for the EOC are consistent with the order format requirements of Rule 6.67(b). Thus, adopting the order format requirements of Rule 6.67(b) for the EOC and incorporating them into Rule 6.67(c) will serve to align Exchange Rules on order entry requirements. In addition, the Exchange notes that the proposed order entry requirements necessary for the systemization of an order for the EOC are substantially similar to those prescribed by the Chicago Board Options Exchange (''CBOE'') pursuant to CBOE Rule 6.24(a)(2).[9]

Pursuant to the proposed rule change, Floor Brokers will be required to enter much of the same information when systematizing an order as is presently required, with the exception of the Clearing Member Trade Agreement (''CMTA'') [10] information, opening/closing designation, the order type or account origin code, the time in force, and whether the order was solicited or unsolicited. Floor Brokers have told the Exchange that generally these are the last bits of information given to them when receiving an order and that waiting to receive this information and enter it into EOC can delay the representation and execution of an order. In today's trading environment of rapidly moving markets and the need to execute an order and hedge a trade in real or near real time, even a slight delay can prove to be detrimental to the handling of an order. Because the CMTA information, the opening/closing designation, the account origin code, the time if force and whether an order was solicited or unsolicited are not contractual terms of a trade itself nor are they required data elements pursuant to the Exchange's order format requirements, the Exchange does not believe this information needs to be entered into the EOC prior to an order being represented in the Trading Crowd, but may be entered contemporaneously upon the receipt of such information, even if that occurs after the order had been represented and executed in the Trading Crowd.

The Exchange notes that proposed rule changes contained in this filing relate only to the system entry requirements for floor based orders and do not amend or revise rules governing the record of orders (Rule 6.68). Floor Brokers must continue to maintain proper order records, including any order information that is presently required for the proper systemization of an order that will no longer be required for that purpose pursuant to this proposal. In addition, the Exchange notes that this proposal does not amend or revise rules governing trade reporting duties (Rule 6.69).

The Electronic Tablet

The Electronic Tablet was an order entry system which would record orders in a hand written format that in turn could be transmitted to a Floor Broker's EOC workstation for representation in the Trading Crowd. The Electronic Tablet provided an alternative to the order entry functionality of the EOC while providing for an accurate time-sequenced record of orders on the Exchange. Floor Brokers could hand write order information into the Electronic Tablet upon receipt of an order, route the order to EOC and then manually key into EOC additional order and transaction information for reporting and clearing purposes.

The Electronic Tablet was designed to expedite the entry of orders into EOC. Due to ongoing enhancements to the functionality of the EOC system since its introduction, the Electronic Tablet was used increasingly less often and eventually became obsolete. The Electronic Tablet was fully decommissioned by the Exchange in 2009. Because Floor Brokers may satisfy all order entry requirements by entering an order directly into EOC, the Exchange has no plans to utilize the Electronic Tablet functionality going forward. Accordingly, the Exchange proposes to delete references to the Electronic Tablet found in its Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed changes to order entry requirements for the EOC is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities by ensuring that the terms of an order continue to be properly systematized prior to the order being represented in the Trading Crowd. The Exchange notes that changes are consistent with the order systemization requirements in the Order which requires, among other things, that the Exchange incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations

[5] The CMTA process allows an OTP Holder to enter trade that is subsequently settled into the account of a different Broker Dealer at the Options Clearing Corporation.

[6] Order type is also referred to as the origin code (i.e. Customer, Firm or Market Maker).

[7] *Supra see* note 6.

[8] In order to accommodate Quarterly Options Series and Short Term Option Series, the Exchange proposes to require the actual expiration date of an option, and not just the expiration month, as presently required.

[9] *See* CBOE Rule 6.24(a)(2). *See also* Securities Exchange Act Release No. 50996 (January 7, 2005), 70 FR 2436 (Jan 13, 2005) (SR–CBOE–2004–77).

[10] The CMTA process allows an OTP Holder or OTP Firm to execute a trade that is subsequently settled into the account of a different broker dealer by the Options Clearing Corporation.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation. The Exchange believes that aligning the order entry requirements for the EOC with the Exchange's order format requirements will further promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities on the Exchange. Reducing the burden on Floor Brokers to enter order information prior to representation will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by reducing the delay in representation and execution of an order on the Exchange. The proposal is also designed to prevent fraudulent and manipulative acts and practices, by ensuring that the Exchange is able to meet its obligation to create and maintain a time-sequenced record of orders, quotations and transactions on the Exchange. In addition, the deletion of rule references pertaining to a decommissioned order entry system will help protect investors and the public interest by reducing potential confusion that may result from having obsolete or out-dated rules in the Exchange's rulebook. Furthermore, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by allowing for more timely executions of open-outcry orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enable NYSE Arca to align the order format requirements of the Exchange with those of a competing options exchange. The proposal would allow Floor Brokers on the Exchange to be afforded the ability to transact business under the similar requirements as brokers on a competing exchange. The Exchange believes that the proposal will reduce the burden on Floor Brokers by coordinating different order entry requirements on different exchanges. By reducing Floor Brokers burden on order entry compliance, the Exchange believes the proposal will improve the competitiveness of Exchange Floor Brokers and also promote competition for orderflow among market participants and the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–21 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–2013–21. 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 20549–1090, 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 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–NYSEArca–2013–21, and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05882 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69081; File No. SR–NYSEMKT–2013–16]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules Governing Order Format and System Entry Requirements

March 8, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 5, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend rules governing Order Format and System Entry Requirements. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 955NY(c) by revising the requirements for entering an order into the Electronic Order Capture System (''EOC''). In addition, the Exchange proposes to delete all references pertaining to the Electronic Tablet, a decommissioned Exchange order entry mechanism.

Order Format and System Entry Requirements

EOC is the Exchange's floor-based electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions entered and executed on the floor of the Exchange. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between booth terminals and the Floor Broker work stations and hand held applications. The EOC is designed to fulfill one of the undertakings contained in the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (''Order'').[4] Specifically, the EOC is intended to respond to Section IV.B.e.(v) of the Order, which requires, among other things, that the Exchange incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation.

In order to comply with the terms of Rule 955NY(c), and thus be in compliance with the Order, Floor Brokers and employees of floor brokerage firms (collectively ''Floor Brokers'') upon receiving an order for execution on the Exchange must immediately, prior to representation in the trading crowd, record the details of the order into EOC. This process, commonly referred to the ''systemization'' of an order, creates an accurate time-sequenced record of orders on the Exchange.

The Exchange has prescribed certain data elements that must be entered into the EOC before an order may be represented in the Trading Crowd. These data elements, as contained in Rule 956NY—Record of Orders, include: (1) Clearing Member Trade Agreement (''CMTA'') information,[5] and the name of the clearing ATP Holder; (2) options symbol, expiration month, exercise price and type of options; (3) side of the market and order type;[6] (4) quantity of options; (5) limit or stop price or special conditions; (6) opening or closing transaction; (7) time in force; (8) account origin code;[7] and (9) whether the order was solicited or unsolicited. The Exchange may, from time to time, also require additional information if needed. The remaining data elements prescribed in Rule 956NY are to be recorded as the events occur and/or during trade reporting procedures.

The Exchange now proposes to incorporate into the text of Rule 955NY(c) specific data elements required for the proper systemization of an order. The Exchange proposes that in order to meet the requirements for the proper systemization of an order Floor Brokers will be required to enter into the EOC: (i) The option symbol; (ii) the expiration date of the option;[8] (iii) the exercise price; (iv) buy or sell with applicable limit or stop price or special instructions; (v) call or put; (vi) the quantity of contracts; (vii) the name of the clearing ATP Holder; and (viii) such other information as may be required by the Exchange from time to time. Any additional information with respect to the order, including those data elements found in Rule 956NY that pursuant to this proposal will no longer be required at the time of systemization, shall be recorded contemporaneously upon receipt which may occur after the representation and execution of the order. The proposed order entry requirements for the EOC are consistent with the order format requirements of Rule 955NY(b). Thus, adopting the order format requirements of Rule 955NY(b) for the EOC and incorporating them into Rule 955NY(c) will serve to align Exchange Rules on order entry requirements. In addition, the Exchange notes that the proposed order entry requirements necessary for the systemization of an order for the EOC are substantially similar to those prescribed by the Chicago Board

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282.

[5] The CMTA process allows an OTP Holder or OTP Firm [sic] to enter a trade that is subsequently settled into the account of a different Broker Dealer at the Options Clearing Corporation.

[6] Order type is also referred to as the origin code (i.e. Customer, Firm or Market Maker).

[7] *See supra* note 6.

[8] In order to accommodate Quarterly Options Series and Short Term Option Series, the Exchange proposes to require the actual expiration date of an option, and not just the expiration month, as presently required.

Options Exchange (''CBOE'') pursuant to CBOE Rule 6.24(a)(2).[9]

Pursuant to the proposed rule change, Floor Brokers will be required to enter much of the same information when systematizing an order as is presently required, with the exception of the CMTA information, opening/closing designation, the order type or account origin code, the time in force, and whether the order was solicited or unsolicited. Floor Brokers have told the Exchange that generally these are the last bits of information given to them when receiving an order and that waiting to receive this information and enter it into EOC can delay the representation and execution of an order. In today's trading environment of rapidly moving markets and the need to execute an order and hedge a trade in real or near real time, even a slight delay can prove to be detrimental to the handling of an order. Because the CMTA information, the opening/closing designation, the account origin code, the time if force and whether an order was solicited or unsolicited are not contractual terms of a trade itself nor are they required data elements pursuant to the Exchange's order format requirements, the Exchange does not believe this information needs to be entered into the EOC prior to an order being represented in the Trading Crowd, but may be entered contemporaneously upon the receipt of such information, even if that occurs after the order had been represented and executed in the Trading Crowd.

The Exchange notes that proposed rule changes mentioned above relate only to the system entry requirements for floor based orders and do not amend or revise rules governing the record of orders (Rule 956NY). Floor Brokers must continue to maintain proper order records, including order information presently required for the proper systemization of an order that will no longer be required for that purpose pursuant to this proposal. In addition, the Exchange notes that this proposal does not amend or revise rules governing trade reporting duties (Rule 957NY).

The Electronic Tablet

The Electronic Tablet was an order entry system which would record orders in a hand written format that in turn could be transmitted to a Floor Broker's EOC workstation for representation in the Trading Crowd. The Electronic Tablet provided an alternative to the order entry functionality of the EOC while providing for an accurate time-sequenced record of orders on the Exchange. Floor Brokers could hand write order information into the Electronic Tablet upon receipt of an order, route the order to EOC and then manually key into EOC additional order and transaction information for reporting and clearing purposes.

The Electronic Tablet was designed to expedite the entry of orders into EOC. Due to ongoing enhancements to the functionality of the EOC system since its introduction, the Electronic Tablet was used increasingly less often and eventually became obsolete. The Electronic Tablet was fully decommissioned by the Exchange in 2009. Because Floor Brokers may satisfy all order entry requirements by entering an order directly into EOC, the Exchange has no plans to utilize the Electronic Tablet functionality going forward. Accordingly, the Exchange proposes to delete references to the Electronic Tablet found in its Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed changes to order entry requirements for the EOC is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities by ensuring that the terms of an order continue to be properly systematized prior to the order being represented in the Trading Crowd. The Exchange notes that changes are consistent with the order systemization requirements in the Order which requires, among other things, that the Exchange incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation. The Exchange believes that aligning the order entry requirements for the EOC with the Exchange's order format requirements will further promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities on the Exchange. Reducing the burden on Floor Brokers to enter order information prior to representation will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by reducing the delay in representation and execution of an order on the Exchange. The proposal is also designed to prevent fraudulent and manipulative acts and practices, by ensuring that the Exchange is able to meet its obligation to create and maintain a time-sequenced record of orders, quotations and transactions on the Exchange. In addition, the deletion of rule references pertaining to a decommissioned order entry system will help protect investors and the public interest by reducing potential confusion that may result from having obsolete or out-dated rules in the Exchange's rulebook. Furthermore, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by allowing for more timely executions of open-outcry orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enable NYSE Amex Options to align the order format requirements of the Exchange with those of a competing options exchange. The proposal would allow Floor Brokers on the Exchange to be afforded the ability to transact business under the similar requirements as brokers on a competing exchange. The Exchange believes that the proposal will reduce the burden on Floor Brokers by coordinating order entry requirements on different exchanges. By reducing Floor Brokers burden on order entry compliance, the Exchange believes the proposal will improve the competitiveness of Exchange Floor Brokers and also promote competition for orderflow among market participants and the options exchanges.

[9] *See* CBOE Rule 6.24(a)(2). *See also* Securities Exchange Act Release No. 50996 (January 7, 2005), 70 FR 2436 (Jan. 13, 2005) (SR–CBOE–2004–77).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–16. 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 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–NYSEMKT–2013–16, and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05883 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69084; File No. SR–BATS–2013–015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules in Connection With the Limit Up-Limit Down Plan

March 8, 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 28, 2013, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. 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 is proposing to amend Rule 11.18 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.18 to establish rules to comply with the requirements of the Limit Up-Limit Down Plan. The Exchange proposes to adopt the changes to become operative on a date that coincides with the commencement of operations of the Plan, which is currently scheduled as a one-year pilot to begin on April 8, 2013. Accordingly, as proposed, the Exchange has designated an operative date of April 8, 2013 to allow the Rules to become effective and operative on the initial date of operation of the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the equities exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses [6] and related changes to the equities market clearly erroneous execution rules [7] and more stringent equities market maker quoting requirements.[8] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[9] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[10]

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.[11] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.[12] As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[13] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[14] All trading centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[15]

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[16] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause pursuant to Section VII of the Limit Up-Limit Down Plan, which would be applicable to all markets trading the security.[17] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a Trading Pause for that NMS Stock.

Proposed Amendment to Rule 11.18

The Exchange is required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. In response to the new Plan, the Exchange proposes to amend its Rules accordingly.

The Exchange proposes to add Rule 11.18(e)(1)(A) to define that ''Plan'' means the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act, as amended from time to time. In addition, proposed Rule 11.18(e)(1)(B) provides that all capitalized terms not otherwise defined in paragraph (e) of the Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable.

The Exchange proposes to add Rule 11.18(e)(2) to provide that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

The Exchange proposes to add Rule 11.18(e)(3) to provide that Exchange Members shall comply with the applicable provisions of the Plan. The Exchange believes that this requirement will help ensure the compliance by its Members with the provisions of the Plan as required pursuant to Section II(B) of the Plan.[18]

The Exchange proposes to add Rule 11.18(e)(4) to provide that the Exchange's System [19] shall not display

[6] *See, e.g.,* Rule 11.18.

[7] *See, e.g.,* Rule 11.17.

[8] *See, e.g.,* Rule 11.8.

[9] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

[10] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[11] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[12] The Exchange is a Participant in the Plan.

[13] *See* Section (V)(A) of the Plan.

[14] *See* Section VI(A) of the Plan.

[15] *See* Section VI(A)(3) of the Plan.

[16] *See* Section VI(B)(1) of the Plan.

[17] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[18] *See* Section II(B) of the Plan.

[19] The ''System'' is defined in BATS Rule 1.5(aa) as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for

Continued

or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan. The Exchange believes that this requirement is reasonably designed to help ensure the compliance with the limit up-limit down and trading pause requirements specified in the Plan, by preventing executions outside the Price Bands as required pursuant to Section VI(A)(1) of the Plan.[20]

The Exchange proposes Rules regarding the treatment of certain trading interest on the Exchange in order to prevent executions outside the Price Bands and to comply with the new Limit Up-Limit Down Plan. In particular, the Exchange proposes to add Rule 11.18(e)(5) to provide that Exchange systems shall re-price and/or cancel buy (sell) interest that is priced or could be executed [21] above (below) the Upper (Lower) Price Band. When re-pricing resting orders because such orders are above (below) the Upper (Lower) Price Band, the Exchange will provide new timestamps to such orders. The Exchange will also provide new timestamps to resting orders at the less aggressive price to which such orders are re-priced. Any resting interest that is re-priced pursuant to this Rule shall maintain priority ahead of interest that was originally less aggressively priced, regardless of the original timestamps for such orders.

Specifically, the Exchange proposes the following provisions regarding the re-pricing or canceling of certain trading interest:

• *Market Orders and IOC Orders.* The System will only execute BATS market orders or IOC Orders at or within the Price Bands. If a Market Order or IOC Order cannot be fully executed at or within the Price Bands, the System shall cancel any unexecuted portion of the order without posting such order to the Exchange's order book.

• *Limit-priced Interest.* Limit-priced Interest.

• *Orders Not Subject to Re-Pricing.* Limit-priced interest will be cancelled if a User has entered instructions not to use the re-pricing process and such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band.

• *Incoming Orders.* If re-pricing is permitted based on a User's instructions, both displayable and non-displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be re-priced to the Upper (Lower) Price Band.

• *Resting Orders.* The System shall re-price resting limit-priced interest to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and the original limit price of displayed and re-priced interest is at or within the Price Bands and a User has opted into the Exchange's optional multiple price sliding process, as described in Rule 11.9(g), the System shall re-price such displayed limit interest to the most aggressive permissible price up to the order's limit price. All other displayed and non-displayed limit interest re-priced pursuant to this paragraph (e) will remain at its new price unless the Price Bands move such that the price of resting limit-priced interest to buy (sell) would again be above (below) the Upper (Lower) Price Band.

• *Pegged Interest.* Pegged interest to buy (sell) shall peg to the specified pegging price or the Upper (Lower) Price Band, whichever is lower (higher).

• *Routable Orders.* If routing is permitted based on a User's instructions, orders shall be routed away from the Exchange pursuant to Rule 11.13. The Exchange is not proposing any changes to its routing functionality in connection with the implementation of the Limit Up-Limit Down Plan.

• *Sell Short Orders.* During a Short Sale Price Test, as defined in Rule 11.19(b)(2), Short Sale Orders priced below the Lower Price Band shall be re-priced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 11.9(g)(2)(A).

• *Auction Orders.* Eligible Auction Orders [22] are not price slid or cancelled due to applicable Price Bands.

The Exchange proposes to adopt Rule 11.18(e)(6) to state that securities shall remain subject to the requirements of paragraph (d) of the Rule until such securities become subject to the Plan. As described in further detail below, paragraph (d) relates to existing individual single stock trading pauses issued by each primary listing market for an NMS Stock. As set forth in proposed Rule 11.18(e)(6), once an NMS Stock is subject to the Plan, the security shall only be subject to a Trading Pause under the Plan consistent with paragraph (f) of the Rule. Thus, paragraph (d) will no longer apply to NMS Stocks subject to the Plan.

The Exchange also proposes to adopt Rule 11.18(e)(7) regarding Trading Pauses during a Straddle State. Consistent with the Plan,[23] the Exchange may declare a Trading Pause for a NMS Stock listed on the Exchange when (i) the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State; and (ii) trading in that NMS Stock deviates from normal trading characteristics.

With respect to the re-opening of trading following a Trading Pause, the Exchange proposes to adopt Rule 11.18(e)(8) to provide that the Exchange shall re-open the security in a manner similar to the procedures set forth in Rule 11.23, which is the Exchange's Rule for auctions of Exchange-listed securities, including halt auctions.

The Exchange believes that the provisions proposed above are reasonably designed to prevent executions outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan.

Finally, the Exchange is proposing to codify its functionally related to the issuance of individual stock trading pauses for Exchange-listed securities. On June 10, 2010, the Commission approved on a pilot basis changes to BATS Rule 11.18 to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index that experience rapid price movement.[24] Later, the Exchange and other markets proposed extension of the trading pause standards on a pilot basis to individual securities in the Russell 1000® Index and specified Exchange Traded Products, which changes the Commission approved on September 10, 2010.[25] More recently, the Exchange proposed expansion of the pilot program to apply to all NMS stocks.[26] This expansion was approved on June 23, 2011.[27] Most recently, the Exchange

ranking, execution and, when applicable, routing away.''

[20] *See* Section VI(A)(1) of the Plan.

[21] The Exchange notes that this includes any interest that is displayed and/or resting at a less aggressive price but executable at a more aggressive price, such as orders subject to price sliding and discretionary order types.

[22] The term ''Eligible Auction Order'' is defined in Rule 11.23(a)(8) is defined to include all orders specifically designated to participate in an Exchange auction and not on the Exchange's continuous order book.

[23] *See* Section VII(A)(2) of the Plan.

[24] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BATS–2010–014).

[25] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BATS–2010–018).

[26] Securities Exchange Act Release No. 64435 (May 6, 2011), 76 FR 27684 (May 12, 2011) (SR–BATS–2011–016).

[27] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14;

extended the proposal to continue on a pilot basis until individual stocks become, on a rolling basis, subject to the Plan.[28] The Exchange began operation last year as the primary listing market for certain securities,[29] and at that time adopted functionality to implement primary market trading pauses. Notwithstanding the foregoing, however, the Exchange has not previously set forth in its Rules the specific standards used to calculate individual stock trading pauses in its capacity as a primary listings market. As set forth below, the Exchange proposes to adopt the same language as other primary listing markets related to trading pauses of individual stocks, as set forth below.

Under existing Exchange Rule 11.18(d), if a primary listing market issues an individual stock trading pause in any Circuit Breaker Securities, which term now means all NMS stocks, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The Exchange notes that such trading pauses will be phased out as securities become subject to the Limit Up-Limit Down Plan, as described above and as set forth in proposed Rule 11.18(e)(7).

The Exchange proposes to amend Rule 11.18(d) to state that, between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading, the Exchange shall immediately pause trading for 5 minutes in any Exchange-listed security, other than rights and warrants, when the price of such security moves a percentage specified below within a 5-minute period, as follows:

(1) The price move shall be 10% or more with respect to securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products;

(2) The price move shall be 30% or more with respect to all NMS stocks not subject to sub-paragraph (d)(1) of the Rule with a price equal to or greater than $1; and

(3) The price move shall be 50% or more with respect to all NMS stocks not subject to sub-paragraph (d)(1) of the Rule with a price less than $1.

The determination that the price of a stock is equal to or greater than $1 under sub-paragraph (2) above or less than $1 under sub-paragraph (3) above shall be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

The Exchange also proposes to modify Rule 11.18(d) to state that at the end of the trading pause, the Exchange will re-open the security using the Halt Auction process set forth in Rule 11.23. In the event of a significant imbalance at the end of a trading pause, the Exchange may delay the re-opening of a security. The Exchange will issue a notification if it cannot resume trading for a reason other than a significant imbalance.

Price moves under paragraph (d), as proposed to be amended, will be calculated by changes in each consolidated last-sale price disseminated by a network processor over a five minute rolling period measured continuously. Only regular way in-sequence transactions qualify for use in calculations of price moves. The Exchange also proposes to make clear that it can exclude a transaction price from use if it concludes that the transaction price resulted from an erroneous trade. If a trading pause is triggered under paragraph (d), the Exchange shall immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Act.

The proposed changes to Exchange Rule 11.18(d) will result in such rule being substantively identical to paragraph (a)(11) of Rule 4120 of the rules of The NASDAQ Stock Market LLC (''Nasdaq''), Rule 80C of the rules of the New York Stock Exchange, LLC (''NYSE''), Rule 80C of the rules of NYSE MKT LLC (''NYSE MKT''), and paragraph (a) of Rule 7.11 of the rules of NYSE Arca Equities, Inc. (''NYSE Arca'').

Finally, the Exchange proposes to clarify in paragraph (e) of existing Rule 11.18 (to be re-designated as paragraph (f)), that Eligible Auction Orders are not cancelled as part of the Exchange's normal process to cancel all outstanding orders in the System in the event of a trading halt imposed or recognized pursuant to Rule 11.18. Although the Exchange cancels most orders as a safety mechanism in the event of any trading halt, the Exchange does not cancel orders that are being held by the Exchange for an auction to occur at a later time (i.e., Eligible Auction Orders).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[30] in general, and furthers the objectives of Section 6(b)(5) of the Act[31] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal will ensure that the Exchange's System will not display or execute trading interest outside the Price Bands in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

The proposal will also ensure that the trading interest on the Exchange is either re-priced to maintain priority or canceled in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Specifically, the proposal will help allow market participants to continue to trade NMS Stocks within Price Bands in compliance with the Plan with certainty on how certain orders and trading interest will be treated. Thus, reducing uncertainty regarding the treatment and priority of trading interest with the Price Bands should help encourage market participants to continue to provide liquidity during extraordinary market volatility. The Exchange believes it is consistent with the protection of investors and the promotion of just and equitable principles of trade to allow resting orders to retain their priority ahead of less aggressively priced liquidity in the event such resting orders are re-priced in compliance with the Plan. To do otherwise, the Exchange believes, would reduce incentives to enter the most aggressively priced, displayed liquidity, and might encourage firms to maintain interest that is one increment away from the most aggressive price level in order to be first in priority in the event of a re-pricing due to a Price Band.

Finally, the proposal to add the primary market threshold standards for the Exchange's issuance of individual stock trading pauses promotes just and equitable principles of trade and removes impediments to, and perfects

SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

[28] Securities Exchange Act Release No. 68851 (February 6, 2013), 78 FR 9955 (February, 12 2013) (SR–BATS–2013–009).

[29] The Exchange is currently the primary listings market for seventeen (17) exchange-traded funds (''ETFs'').

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

the mechanism of, a free and open market and a national market system. Individual stock trading pauses, along with other changes, were implemented to help to strengthen investor confidence in the markets and, thus, were intended to enhance and promote capital formation. By codifying the primary listing market standards with respect to trading pauses in its rules, the Exchange will help to alleviate any potential confusion with respect to such pauses, particularly in light of the implementation of the Limit Up-Limit Down Plan. The proposed rule change is also consistent with Section 11A(a)(1) of the Act [32] in that it seeks to assure fair competition among brokers and dealers and exchange markets. The Exchange believes that the proposed rule changes promote just and equitable principles of trade in that they promote uniformity across listing markets concerning the application of individual stock trading pauses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal enhances cooperation among markets and other trading venues to promote fair and orderly markets and to protect the interests of the public and of investors. The Limit Up-Limit Down Plan is part of a coordinated effort amongst various parties including the Exchange and other self-regulatory organizations as well as other market participants. While the specific proposals to implement changes to Exchange functionality consistent with the Plan may differ in certain ways from the implementation adopted by other market centers, the Exchange believes its proposals are consistent with the requirements and purpose of the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [33] and Rule 19b–4(f)(6) thereunder.[34] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2013–015 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–BATS–2013–015. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BATS–2013–015 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05886 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78k–1(a)(1).

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69085; File No. SR–ISE–2013–15]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend the Obvious and Catastrophic Errors Rule

March 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 720, Obvious and Catastrophic Errors. The text of the proposed rule change is available on the Exchange's Web site *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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing two changes to ISE Rule 720 (Obvious and Catastrophic Errors) to harmonize the rule so that it is applied consistently for both obvious errors and catastrophic errors.

Erroneous Transactions Involving Priority Customers

First, under the current rule, the Exchange nullifies obvious error transactions unless all parties to the trade are ISE market makers, in which case the Exchange adjusts the price of the transaction. With respect to catastrophic errors, the ISE currently adjusts all transactions even if they involve non-market makers. The Exchange notes that while market professionals would prefer that all transactions be adjusted rather than nullified, there is an equally valid opposing view because adjustments can result in retail customer orders being adjusted to prices that may exceed their limit order price, potentially by a large amount, which retail customers would not expect.

Therefore, ISE proposes amend [sic] Rule 720(b) (Obvious Error Procedure) and 720(c) [3] (Catastrophic Error Procedure) to harmonize the obvious error and catastrophic error procedures by nullifying trades in both cases for transactions involving Priority Customers and adjusting trades where none of the parties to the trade are Priority Customers (*i.e.,* market makers, broker-dealers and professional customers). Specifically, the Exchange proposes to amend Rule 720(b)(2)(ii) and adopt Rule 720(c)(2)(B) which states that where at least one party to the obvious or catastrophic error is a Priority Customer, the trade will be nullified by Market Control [4] unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Market Control of its determination. If the customer is willing to accept the adjusted price, and the customer has thirty (30) minutes to make that determination and the trade will be adjusted. If the customer does not respond within the prescribed time period, the trade will be nullified.

The Exchange believes that the proposal to limit obvious error trade nullification only to transactions involving Priority Customers, and allowing catastrophic error trade nullification for transactions involving Priority Customers appropriately limits the number of nullifications, while assuring that retail customer orders are not adjusted through their limit order price (in other words, the adjusted price is higher than the limit price if it is a buy and lower than the limit price if it is a sell order) and forced to spend additional money for a trade at a price the customer had no interest in trading.

The Exchange believes that retail customers are less likely to be immersed in the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. The Exchange, therefore, believes that it is fair and reasonable, and consistent with statutory standards, to change the procedure for obvious and catastrophic errors involving Priority Customers, and not for other market participants, so as not to expose Priority Customers to additional risk.

The Exchange believes that this proposed rule change is a fair way to address the issue of a trade executing through a customer's limit order price while balancing the competing interests of certainty that trades stand versus dealing with true errors. The proposed rule change would continue to entail specific and objective procedures. Furthermore, the proposed rule change more fairly balances the potential windfall to one market participant against the potential reconsideration of a trading decision under the guise of an error.

Determination of Erroneous Transactions

Second, under the current rule, Market Control determines whether an obvious error has occurred and applies the rule for making adjustments or nullifying trades, with the ability for those affected to request that a panel of members review actions taken by Market Control. With respect to catastrophic errors, the rule currently requires that a panel of members make the initial determination rather than Market Control. In the Exchange's experience, this procedure of requiring a member panel to make the initial determination of whether or not a catastrophic error has occurred in all cases is inefficient and unnecessary.

Therefore, ISE proposes to harmonize the procedures for making obvious error and catastrophic error determinations. Specifically, ISE proposes to amend the catastrophic error procedure to provide parties affected by an action taken by Market Control the ability to request that such actions be reviewed by a member panel rather than requiring that a member panel make the initial determination in all cases. Specifically, the Exchange proposes to adopt rule text allowing Market Control to make the determination of whether or not a Catastrophic Error has occurred and what steps it shall take in the event a determination has been made that a Catastrophic Error has occurred.[5] The Exchange believes that this approach is similar to rules of other markets.[6]

With this proposed rule change, the Exchange also proposes to rearrange parts of Rule 702. Specifically, the Exchange proposes to delete Rule 720(c) (Obvious Error Panel) and move the substance of that rule to new Rule 720(d), which is also renamed Review Panel, and which will now apply to both obvious and catastrophic errors. Proposed Rule 720(d) provides the composition of the Review Panel,[7] the scope of the Review Panel's review,[8] the procedure for requesting review [9] and the decisions of the Review Panel.[10]

[3] This proposed rule change also realigns certain parts of Rule 720. The rule on Catastrophic Error Procedure rule was previously found in Rule 720(d) and with the proposed realignment, this rule now appears as Rule 720(c).

[4] Market Control consists of designated personnel in the Exchange's market control center. *See* ISE Rule 720(a)(3)(ii).

[5] *See* Proposed Rule 720(c)(2).

[6] *See* PHLX Rule 1092(e)(ii) and (f)(ii).

[7] *See* Proposed Rule 720(d)(1).

[8] *See* Proposed Rule 720(d)(2).

[9] *See* Proposed Rule 720(d)(3).

[10] *See* Proposed Rule 720(d)(4).

Finally, the Exchange also proposes to make conforming changes to Supplementary Material .01, .02, .03 and .04 to Rule 720 to reflect the changes proposed herein.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed change is designed to promote just and equitable principles of trade, will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change relating to nullifying trades involving Priority Customers and adjusting trades where none of the parties are Priority Customers will help market participants better manage risk associated with potential erroneous trades. The Exchange believes that the proposal provides a fair process that will ensure that customers are not forced to accept a trade that was executed in violation of the customer's limit order price. For two reasons, the Exchange does not believe that the proposal is unfairly discriminatory, even though it offers some market participants a choice as to whether a trade is nullified or adjusted, while other market participants will continue to have all of their obvious and catastrophic errors adjusted.[11] First, the Exchange's current rule differentiates among market participants. The notification period to begin the obvious error process is different for Exchange market makers and non-market makers (*i.e.,* Electronic Access Members),[12] and whether a trade is adjusted or busted also differs.[13] Second, options rules often treat Priority Customers in a special way,[14] recognizing that Priority Customers are not necessarily immersed in the day-to-day trading of the markets, less likely to be watching trading activity in a particular option throughout the day and may have limited funds in their trading accounts. Accordingly, differentiating among market participants by permitting Priority Customers to have a choice as to whether to nullify a trade involving an obvious or a catastrophic error is not unfairly discriminatory, because it is reasonable and fair to provide Priority Customers with additional options to protect themselves against the consequences of obvious and catastrophic errors.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Priority Customer, because a person would not know, when entering into the trade, whether the other party is or is not a Priority Customer. The Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors and the public interest, because it eliminates a more serious uncertainty in the rule's operation today, which is *price* uncertainty. Today, a Priority Customer's order can be adjusted to a significantly different price, which is more impactful than the possibility of nullification.

Furthermore, there is uncertainty in the current obvious error portion of Rule 720 (as well as the rules of other options exchanges), which market participants have dealt with for a number of years. Specifically, Rule 720(b)(2)(i) provides that if it is determined that an Obvious Error has occurred where each party to the transaction is a market maker on the Exchange, the execution price of the transaction will be adjusted by Market Control (in accordance with subsection (A) and (B) of the rule, unless both parties agree to adjust to a different price or to nullify the transaction within ten minutes of being notified by Market Control of the Obvious Error. Additionally, Rule 720(b)(2)(ii) provides that if it is determined that an Obvious Error has occurred where at least one party to the transaction to the Obvious Error is not an Exchange market maker, the trade will be busted by Market Control, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Control of the Obvious Error. Therefore, an Exchange market maker who prefers adjustments over nullification cannot guarantee that outcome, because, if he trades with a non-Exchange market maker, a resulting obvious error would only be adjusted if the party on the other side of the trade agrees to an adjustment. This uncertainty has been embedded in the rule and accepted by market participants. The Exchange believes that this proposal, despite the uncertainty based on whether a Priority Customer is involved in a trade, is nevertheless consistent with the Act, because the ability to nullify a Priority Customer's trade involving an obvious or a catastrophic error should prevent the price uncertainty that mandatory adjustment under the current rule creates, which should promote just and equitable principles of trade and protect investors and the public interest. The Exchange has also weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an obvious or a catastrophic error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions.

Further, the Exchange believes that the proposed rule change relating to Market Control making the determination of whether a catastrophic error has occurred will promote just and equitable principles of trade by adding certainty and more consistency to the current rule.

The Exchange's obvious and catastrophic rule and the procedures that carry out the rule have consistently been based on specific and objective criteria. The Exchange believes this proposed rule change furthers that principle by adopting objective guidelines for the determination of which trades may be nullified or adjusted and for the determination of whether or not a trade is deemed to be a catastrophic error.

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 Exchange Act. The proposed rule change is intended to help market participants better manage the risk associated with erroneous options trades and therefore does not impose any burden on competition. While most options exchanges have similar, though not identical, rules regarding obvious and catastrophic errors, this proposed rule change, which treats Priority Customer orders differently than other exchanges do, may result in market participants choosing to route such orders to ISE and therefore attract order flow to ISE instead to a competing exchange.

[11] Another options exchange recently cited these reasons as the basis to amend its catastrophic error rule to treat customer orders differently than non-customer orders. *See* Securities Exchange Act Release No. 68907 (February 12, 2013), 78 FR 11705 (February 19, 2013) (SR–PHLX–2013–05).

[12] *See* ISE Rule 720(b)(1).

[13] *See* ISE Rule 720(b)(2).

[14] For example, many options exchanges' priority rules treat Priority Customer orders differently and some options exchanges only accept certain types of orders from Priority Customers. Most options exchanges also charge different fees for Priority Customer orders.

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 publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (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–2013–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 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–2013–15 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05889 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69089; File No. SR–FINRA–2013–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

March 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items substantially have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 4240 to permit a member to require, with respect to credit default swaps that are security-based swaps (''CDS'') held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. In addition, the proposed rule change makes other revisions to FINRA Rule 4240 to clarify and update the rule.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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 V below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Portfolio Margining

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') into law.[3] Title VII of the Dodd-Frank Act (''Title VII'') establishes a regulatory regime applicable to the over-the-counter derivatives markets. Title VII provides the SEC and the CFTC with tools to oversee these markets.[4] Under the comprehensive framework established in Title VII, the SEC is given regulatory authority over security-based swaps, and the CFTC is given regulatory authority over swaps.[5] The Dodd-Frank

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] Subtitle A of Title VII creates and relates to the regulatory regime for swaps, while Subtitle B of Title VII creates and relates to the regulatory regime for security-based swaps.

[5] *See* Section 3(a)(68) of the Exchange Act, 15 U.S.C. 78c(a)(68) (as added by Section 761(a)(6) of the Dodd-Frank Act) and Section 1a(47) of the

Continued

Act contemplates certain self-regulatory organization responsibilities in this area as well.[6] Section 713(a) of the Dodd-Frank Act amended the Exchange Act to generally permit a broker-dealer that is also registered as a futures commission merchant (''FCM'') under the CEA to hold cash and securities in a portfolio margining account that is carried as a futures account, pursuant to a portfolio margining program that is approved by the CFTC. Reciprocally, Section 713(b) of the Dodd-Frank Act amended the CEA to generally permit an FCM that is also registered as a broker-dealer to hold futures contracts and options on futures contracts (as well as money, securities or other property received from a customer to margin, guarantee or secure such contracts, or accruing to a customer as a result of such contracts) in a portfolio margining account that is carried as a securities account pursuant to a portfolio margining program that is approved by the SEC.

The SEC and the CFTC have recently acted to grant specific exemptions to facilitate portfolio margining of swaps and security-based swaps.[7] To help facilitate portfolio margining pursuant to this regulatory relief, FINRA proposes to amend FINRA Rule 4240, which implements an interim pilot program (the ''Interim Pilot Program'') with respect to margin requirements for certain transactions in CDS.[8] Specifically, proposed new FINRA Rule 4240(c)(3) provides that, in lieu of the requirements set forth in paragraphs (c)(1) and (c)(2) of the rule,[9] a member may require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, provided that, prior to margining CDS on a portfolio margin basis, the member shall notify FINRA in advance in writing of its intent to operate under the portfolio margin program.

Additional Amendments to FINRA Rule 4240

FINRA proposes to amend the margin requirements set forth in paragraph (c)(2) and Supplementary Material .01 [10] of FINRA Rule 4240 to clarify that, in addition to requiring the applicable minimum margin (''initial margin''), a member must collect daily from each customer or broker-dealer counterparty an amount at least equal to the member's current exposure, as defined in Exchange Act Rule 15c3–1e(c)(4) (provided, however, that members not otherwise subject to Exchange Act Rule 15c3–1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule),[11] arising from the daily mark to market of the CDS (''variation margin''). FINRA notes that collection of variation margin has been implicitly required by the administration of Rule 4240; the amendments would be designed to make this variation margin requirement clear.

FINRA proposes to amend the reference to ''largest maximum possible loss'' in paragraph (d)(8) of the rule by adding the phrase ''(that is, the notional amount of the CDS less the estimated recovery given default).'' FINRA believes that the proposed language, by providing members a reference point for computing the largest maximum possible loss pursuant to the rule, lessens the potential burdens from higher capital charges that could result absent the proposed language.

FINRA proposes to clarify the first sentence of paragraph (a) of the rule and the first sentence of paragraph (c)(1) by removing the references to ''matching transactions'' and making other conforming edits so as to streamline the rule language. Also in the first sentence of paragraph (a), FINRA proposes to amend the phrase ''transactions in [CDS] executed by a member'' to read ''transactions in [CDS] held in an account at a member'' so as to clarify the rule's scope and conform with the remainder of the rule.

Finally, FINRA proposes to amend paragraphs (c)(2) and (e) [12] and Supplementary Material .01 of Rule 4240 by adding the phrase ''Unless otherwise permitted by FINRA in writing.'' FINRA anticipates that members may need more flexibility to prepare for and respond to regulatory requirements pursuant to the Dodd-Frank Act in connection with CDS. Accordingly, FINRA believes that this language will make the rule's administration more flexible and efficient, and facilitate the transition to such new requirements, by enabling FINRA staff to, for example, permit members, where appropriate, to take capital charges in lieu of collecting the margin required by the rule.

The proposed rule change will become effective upon approval by the SEC. FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act [13] for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act by permitting a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the

Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(47) (as added by Section 721(a) of the Dodd-Frank Act) for the definitions of security-based swap and swap, respectively. *See also* Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (August 13, 2012) (Joint Final Rule with the CFTC: Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping), further defining the terms swap and security-based swap.

[6] *See, e.g.,* Sections 712 and 763 of the Dodd-Frank Act.

[7] *See* Exchange Act Release No. 68433 (Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps) (December 14, 2012), 77 FR 75211 (Dec. 19, 2012); *see also* CFTC Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps (January 14, 2013) available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf*.

[8] On July 13, 2012, FINRA extended the implementation of the Interim Pilot Program to July 17, 2013. *See* Exchange Act Release No. 67449 (July 17, 2012), 77 FR 43128 (July 23, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2012–035).

[9] FINRA Rule 4240(c)(1) addresses transactions in CDS that make use of the central counterparty clearing facilities of a clearing agency using a margin methodology the use of which has been approved by FINRA as announced in a *Regulatory Notice*. FINRA Rule 4240(c)(2) addresses transactions making use of facilities that do not use such a methodology, or that settle over-the-counter.

[10] Supplementary Material .01 of FINRA Rule 4240 sets forth the rule's specific margin requirements.

[11] FINRA is similarly revising the reference to Exchange Act Rule 15c3–1e(c)(4) in paragraph (e) of Rule 4240. Specifically, as revised, the reference would read ''SEA Rule 15c3–1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3–1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule).'' Under Exchange Act Rule 15c3–1e(c)(4)(v)(G), a broker-dealer, when calculating maximum potential exposure and current exposure to a counterparty, is permitted to take into account the fair market value of collateral pledged and held provided, in part, that the Commission has approved the broker's or dealer's use of a VaR model to calculate deductions for market risk for the type of collateral in accordance with Exchange Act Rule 15c3–1e. FINRA believes that the proposed rule change is a useful clarification for members that do not operate pursuant to Exchange Act Rule 15c3–1e other than, for purposes of Rule 4240, to utilize the specified definitions under Exchange Act Rule 15c3–1e(c)(4).

[12] FINRA Rule 4240(e) addresses requirements with respect to concentrations.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78*o*–3(b)(6).

member's portfolio margin methodology, subject to specified requirements. The proposed rule change will clarify and update provisions of FINRA Rule 4240 with respect to margin requirements for CDS. These changes will facilitate members' compliance with the Act and help to stabilize the financial markets by requiring margin commensurate to the risks of the portfolio.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change with respect to FINRA Rule 4240(c)(3) would reduce burdens on all members with customers using margin on multiple products by permitting a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. With respect to the additional proposed amendments to FINRA Rule 4240, FINRA believes the proposed rule change will, by streamlining and clarifying the rule, facilitate the rule's orderly administration, thereby reducing burdens on members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Commission's Findings

After careful consideration of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change will further the purposes of the Exchange Act by permitting a FINRA member to require from a CDS customer, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. More specifically, the proposed rule change will facilitate portfolio margining treatment for customer-related positions in cleared CDS that are security-based swaps for FINRA member firms under an approved portfolio margining program. Currently, the only portfolio margining program approved by the Commission, under which FINRA member firms may operate, is the program established by the conditional exemptive relief granted by the Commission, on December 14, 2012.[16] The Commission's Order provides for conditional exemptive relief from certain provisions of the Exchange Act to allow any dually-registered clearing agency/derivatives clearing organization and its members that are broker-dealer/FCMs to, among other things, (1) hold customer assets used to margin, secure, or guarantee customer positions consisting of cleared CDS, which include both swaps and security-based swaps, in a commingled customer account subject to Section 4d(f) of the CEA; and (2) calculate margin for this commingled customer account on a portfolio margin basis. Absent such relief, CDS that are swaps would be required to be held in a Section 4d(f) account under the CEA, while CDS that are security-based swaps would be required to be held separately in a securities account governed by the Commission's customer protection requirements.

The proposed rule change also will clarify and update provisions of FINRA Rule 4240 with respect to margin requirements for CDS. These changes will facilitate FINRA member firms' compliance with the Exchange Act and help to stabilize the financial markets by requiring margin commensurate to the risks of the portfolio.

The Commission does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change with respect to FINRA Rule 4240(c)(3) will reduce burdens on FINRA member firms by permitting them to operate under an approved portfolio margining program if the firm notifies FINRA in advance in writing. Under such a portfolio margining arrangement, FINRA member firms may be able to maintain reduced levels of margin that are commensurate with the risks of the portfolio based on correlations in a member's cleared CDS positions consisting of both swaps and security-based swaps. With respect to the additional proposed amendments to FINRA Rule 4240, the proposed rule change will, by streamlining and clarifying the rule, facilitate Rule 4240's orderly administration, thereby reducing burdens on FINRA member firms.

IV. Accelerated Approval

The Commission finds good cause, pursuant to Rule 19(b)(2)[17] of the Act, for approving the proposed rule change prior to the 30th day after the date of publication in the **Federal Register**. On March 11, 2013, the CFTC's mandatory clearing requirement for certain index CDS will begin to take effect.[18] The proposed rule change facilitates portfolio margining programs for CDS that are required to be cleared beginning on March 11, 2013, under the CFTC's clearing mandate, by permitting a FINRA member, under FINRA Rule 4240, to require from a CDS customer, with respect to CDS that are security-based swaps held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements.[19] Because a CDS customer, subject to the CFTC's clearing mandate,[20] would need to commingle swaps and security-based swaps in a single account to receive portfolio margin benefits, the Commission believes that accelerated approval of the proposed rule change is necessary to prevent the potential disruption of customer portfolio CDS activities. In addition, accelerated approval will help ensure that FINRA member firms may participate in an approved portfolio margining program without unnecessary delay. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated basis.

[15] 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).

[16] *See supra* note 7.

[17] 15 U.S.C. 78s(b)(2).

[18] CFTC, ''Clearing Requirement Determination under Section 2(h) of the CEA'', 77 FR 74284 (December 13, 2012), which is a final rule establishing the first mandatory clearing compliance date of March 11, 2013, for certain classes of CDS and interest rate swaps.

[19] *Id.; see also supra* note 7.

[20] *See supra* note 30.

V. 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–FINRA–2013–017 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–FINRA–2013–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2013–017 and should be submitted on or before April 4, 2013.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[21] of the Act, that the proposed rule change (SR–FINRA–2013–017) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05894 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(2).

[22] *See* 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69076; File No. SR–Phlx–2013–19]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Fee Schedule Governing Order Routing for the NASDAQ OMX PSX Facility

March 8, 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 27, 2013, NASDAQ OMX PHLX LLC (''PHLX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHLX proposes to change the fee schedule governing order routing for the NASDAQ OMX PSX facility (''PSX''). The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/,* at PHLX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PHLX is amending its fee schedule governing order routing to establish fees for routing orders using its two new order routing strategies, XDRK and XCST.[3] All of the changes pertain to securities priced at $1 or more per share.

With respect to XDRK and XCST orders that access liquidity in the PSX System, members will be charged $0.0028 per share. With respect to XDRK and XCST orders that provide liquidity in the PSX System, under the existing fee schedule, XDRK and XCST orders will be treated no differently than other orders and member organizations will receive a credit of $0.0028 or $0.0026 per share executed, depending upon the specifics of the order. With respect to XCST orders that execute on NASDAQ OMX BX, member organizations will receive a credit of $0.0014 per share executed. With respect to XDRK and XCST orders that execute on a venue other than PSX or NASDAQ OMX BX, there will be no charge or credit.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which PHLX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing for XDRK and XCST orders executed on PSX is reasonable because it is the same as the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] XDRK orders, pursuant to Rule 3315(a)(1)(A)(viii), check the System for available shares and simultaneously route to certain destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS (i.e. ''dark venues'' or ''dark pools''). XCST orders, pursuant to Rule 3315(a)(1)(A)(ix), check the System for available shares and simultaneously route to select dark venues and to certain low cost exchanges. *See* Securities Exchange Act Release No. 68838 (February 6, 2013), 78 FR 9977 (February 12, 2013) (SR–Phlx–2013–08).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

current pricing for other routed order types executing on PSX. The proposed pricing for XCST orders executed on NASDAQ OMX BX is reasonable because it is the same as the current pricing for other routed order types, namely PSTG, PSCN, PTFY and PCRT orders, executed on BX. For XDRK and XCST orders that execute on a venue other than PSX and BX, there will be no charge or credit, which PHLX believes is reasonable because, by definition, these routing strategies only route to low cost venues. Moreover, the Exchange is seeking to create more interest in PSX and in PSX participants sending routable orders to it, and is therefore willing to forego recouping its costs in order to attract liquidity.

The proposed pricing for XDRK and XCST orders is consistent with an equitable allocation of fees because such pricing shall apply equally to all PSX participants. Finally, the changes are not unfairly discriminatory because they solely apply to members that opt to route XDRK and XCST orders. Moreover, the lower cost of these routing strategies as compared with other existing routing strategies is not unfairly discriminatory because it is consistent with the lower costs associated with routing to the venues that are accessed by the new strategies.

Finally, PHLX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, PHLX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. PHLX believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the PSX routing facility to route reflect changes in the cost of such routing.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order routing is extremely competitive, members may readily opt to disfavor PHLX's routing services if they believe that alternatives offer them better value. Moreover, by introducing new routing options and charging fees that PHLX believes to be reasonable, PHLX believes that it is increasing its competitiveness vis-à-vis other trading venues. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, PHLX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. PHLX also does not believe that the proposal raises issues of competition among its own market participants, because the proposal applies fee and credits equally to all participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (f)(2) of Rule 19b–4 [7] thereunder, because it establishes a due, fee, or other charge imposed by Phlx.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [8] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–19. 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 20549–1090, 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–19, and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05881 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69086; File No. SR–MSRB–2013–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to MSRB Form RTRS

March 8, 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 March 1, 2013, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The implementation date of the proposed rule change will be April 15, 2013. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to MSRB Form RTRS (the ''proposed rule change''), required in connection with the MSRB's Real-Time Transaction Reporting System (''RTRS''). The proposed rule change simplifies or eliminates certain data elements required to complete Form RTRS. The MSRB is not proposing any textual changes to its rules.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As further described below, the purpose of the proposed rule change is to amend Form RTRS (''current Form RTRS''), required to be filed by dealers to process transactions reported under MSRB Rule G–14, by simplifying or eliminating certain data elements relating to such filings.

Form RTRS. The implementation of RTRS, the MSRB's facility for real-time transaction reporting and price dissemination, was approved by the Commission in 2004,[4] together with related changes to Rule G–14, on transaction reporting, and Rule G–12(f), on automated comparison of inter-dealer transactions. The implementation of RTRS was part of the evolution of the MSRB's efforts to improve price transparency in the municipal securities market and provide a facility for the dissemination of comprehensive and contemporaneous pricing data. MSRB Rules G–14 RTRS Procedures and G–12 require brokers, dealers and municipal securities dealers (''dealers'') to report transactions in municipal securities within 15 minutes of the time of trade execution, and to submit inter-dealer transactions to a central comparison system within the same time frame. The implementation of RTRS also enhanced the surveillance database and audit trail used by enforcement agencies.

Subject to certain exceptions, Rule G–14 currently requires dealers to report each purchase and sale of a municipal security to RTRS in the manner and as prescribed by Rule G–14 RTRS Procedures and the RTRS Users Manual. Current Form RTRS, which dealers must use to submit information to the MSRB pursuant to Rule G–14(b)(iv), requires dealers to provide certain information to ensure that their trade reports can be processed accurately, including:

- Type of business activities engaged in by the dealer, including whether the dealer engages in reportable trade activity or acts as a broker's broker;
- Identifiers used for reporting purposes, including effecting broker symbol(s) (also known as ''MPIDs'') assigned by NASDAQ, and participant identifier(s) assigned by the National Securities Clearing Corporation (''NSCC'');
- Identity of dealer staff to be contacted, including staff to be contacted for issues concerning quality of trade data submissions; staff to be contacted for issues concerning initial testing; if so elected by the dealer, staff to be allowed access to RTRS Web; and staff to be contacted for issues concerning technical problems in computer-to-computer data submissions;
- Trade submission relationships, including identity of other dealers submitting on behalf of the dealer submitting current Form RTRS; whether the dealer will be submitting transactions on its own behalf, and/or submitting trade reports on behalf of others; and identity of any non-dealer organizations submitting transactions on behalf of the dealer;
- Error monitoring processes, including the type of feedback (and related contact information) selected by the dealer to comply with Rule G–14 RTRS Procedures section (a)(v);
- Testing information, including information necessary to determine the type of testing required during the start-up and transition phase to RTRS; and
- Filing information, including certification of accuracy, name and CRD number of the dealer/the individual filing current Form RTRS on behalf of the dealer and date of filing.

Current Form RTRS must be completed and submitted electronically. Dealers are also required to notify the MSRB when the information on current Form RTRS changes.

Since originally designed, certain elements of current Form RTRS have become obsolete. First, there is no longer any need to collect the same testing information as was needed during the start-up phase of RTRS in 2004. In addition, reengineering current Form RTRS creates opportunities to improve the ease of use and align RTRS data collection technologically with the MSRB's Long-Range Plan for Market Transparency Products by improving

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 50294 (August 31, 2004), 69 FR 54170 (September 7, 2004) (File No. SR–MSRB 2004–02).

data quality, consistency and correction processes.[5]

Summary of proposed rule change. As noted above, the proposed rule change amends current Form RTRS by simplifying or eliminating certain information currently required from dealers to process transactions required to be reported under MSRB Rule G–14. The proposed rule change does not include any changes to Rule G–14. Revised Form RTRS (''revised Form RTRS'') will be required to be submitted by dealers only in electronic form, as is the case with current Form RTRS. The proposed rule change (i) modifies the account management function for RTRS web users; (ii) allows certain information from the filer's MSRB Gateway system [6] account to pre-populate certain sections of revised Form RTRS; (iii) improves the ability to identify and distinguish trades reported by dealers trading in multiple capacities; (iv) removes elements of the current Form RTRS relating to start-up testing, including the requirement to identify a dealer's contacts for initial testing of its RTRS interface; and (v) corrects or eliminates minor obsolete elements in current Form RTRS.

The proposed rule change moves the management of RTRS Web user accounts from current Form RTRS into existing account management functions in the MSRB Gateway system, as well as eliminates the requirement to identify a testing contact. Identification of individuals necessary for data quality and technical issues is retained. The incorporation of RTRS Web account management into the MSRB Gateway system brings that system into conformance with other similar systems, such as SHORT Web and EMMA Dataport.[7]

Current Form RTRS requires dealers to indicate whether they are acting as broker's brokers, but does not enable dealers acting in both a broker's broker and non-broker's broker capacity to indicate both roles. As a result, all trades are processed identically. Revised Form RTRS adds the functionality for dealers acting in both capacities to specify a separate symbol for trades done in each capacity.[8] The proposed rule change revises Form RTRS, but does not impose any new trade reporting obligations, and any such changes will be addressed in separate rulemaking proceedings.

Other changes include removing certain obsolete information. The attachment section to current Form RTRS (''Start-Up Testing'') contains provisions relating to preparations for the launch of RTRS in 2004. Since such information is now obsolete, the proposed rule change eliminates the data collected in the attachment entirely. Other information not used or necessary to administer the RTRS program includes, among other things, certain details about a dealer's designated contacts, and information about transactions submitted by a dealer on behalf of others, as further described below. Finally several minor details in the Form (such as department names and the MSRB address) are corrected or eliminated.

Revised Form RTRS is attached as Exhibit 3. Revised Form RTRS requests information organized in four categories: Business Activities, Trade Reporting Identifiers, Designated Contacts and Submission and Feedback. As noted above, while the format of Form RTRS has changed, much of the information previously required from dealers remains the same. Following is a description of the data required on current Form RTRS and the treatment of such data on revised Form RTRS.

Revisions to Current Form RTRS

Section A General Information

Section A1 of current Form RTRS requests the following Company Identifier elements:

- Company MSRB number: This data will be pre-populated when logging in to Form RTRS through a filer's Gateway account and will not be submitted through revised Form RTRS.
- Company name: This data will be pre-populated when logging in to Form RTRS through a filer's Gateway account and will not be submitted through revised Form RTRS.
- NASD [9]Assigned Effecting Broker Symbol: This data element has been retained but will now be relocated to Trade Reporting Identifiers.
- CRD number: This data will be pre-populated when logging in to Form RTRS through a filer's Gateway account and will not be submitted through revised Form RTRS.
- SEC number: This data will be pre-populated when logging in to Form RTRS through a filer's Gateway account and will not be submitted through revised Form RTRS.
- NSCC Participant ID: This data element has been retained but will now be relocated to Trade Reporting Identifiers.

Section A2 of the current Form RTRS requests information concerning the applicability of MSRB Rule G–14 to the filer's transactions, and directs the filer to chose the applicable class of transactions from a checklist. This checklist has been relocated to Business Activities and now allows the filer to choose more than one applicable class of transactions.

Section B Contacts

Sections B1 and B2 of current Form RTRS request the following identical information about the Form Contact and Additional Contacts:

- Name: This data will be pre-populated from the designated contact's Gateway account and will be relocated to Designated Contacts.
- Title; Dept.; and Business Address: Business Address data has been deleted because it is otherwise available through the filer's Gateway account. The Title and Dept. data, although also available through the filer's Gateway account, has been deleted because it is no longer necessary to administer the RTRS program.
- Phone: This data will be pre-populated from the designated contact's Gateway account and will be relocated to Designated Contacts.
- Fax: This data has been deleted because although otherwise available through the filer's Gateway account, it is not used.
- Email address: This data will be pre-populated from the designated contact's Gateway account and will be relocated to Designated Contacts.
- CRD No.: This data has been deleted because it is no longer necessary to administer the RTRS program.
- Data Quality: Designation of primary and secondary contacts will be retained but will be relocated in Designated Contacts.
- RTRS Web Access: These designations have been deleted because they are now managed outside of Form RTRS.
- Technical Support: Designation of contact will be retained but will be relocated in Designated Contacts.
- Email recipient: This designation for error feedback has been retained but the email address for such person will

[5] The MSRB Long-Range Plan for Market Transparency Products is available on *www.msrb.org.*

[6] MSRB Gateway is the single, secure access point for all MSRB market transparency submission services, applications and associated forms. Specific functions users can perform in Gateway include: (1) Set up secure, password-protected accounts; (2) manage organization and user account details; (3) access certain forms used for MSRB submission services, such as Form RTRS; and (4) manage agent designations.

[7] SHORT Web and EMMA Dataport are user interfaces used by dealer staff to submit data and document information pursuant to MSRB Rules G–32 and G–34.

[8] This feature is managed in the Trade Reporting Identifiers section by the use of the ''+ Add New Symbol'' function.

[9] Now NASDAQ.

be relocated in Trade Reporting Identifiers and associated with a particular EBS symbol.

• Testing: This designation has been deleted because it is obsolete.

Section C Dealer Relationships

Section C1 requests information about a reporting agent, if applicable, submitting on behalf of the filer:

• Indication, if applicable, if a dealer is reporting transactions on filer's behalf: This data will be retained but will be relocated to Submission and Feedback.

• Company name of reporting agent: This data will be retained but will be relocated to Submission and Feedback.

• Reporting Agent's NSCC Participant ID: This data will be retained but will be relocated to Submission and Feedback.

Section C2 requests information about any transactions submitted by the filer on its own behalf or on behalf of others:

• Indication, if applicable, that filer will submit its own transactions: this data will be retained but will be relocated to Submission and Feedback.

• Indication, if applicable, that filer will submit transactions for other dealers: This designation has been deleted because it is no longer necessary to administer the RTRS program.

• Indication, if applicable, that filer is an NSCC Participant: This data will be retained but will be relocated to Business Activities.

• Indication, if applicable, that filer will require an MSRB assigned submitter number: This designation has been deleted because it is obsolete.

Section C3 requests information concerning the filer's activities as a broker's broker:

• Indication, if applicable, that filer acts as a broker's broker: This data will be retained but will be relocated to Business Activities.

Section D Other Data

Section D1 Error Feedback: This section requests information about the error feedback method selected by the filer and directs the filer to choose one or more applicable methods from a checklist. This checklist has been retained but will be relocated to Submission and Feedback.

Section D2 Service Bureau: This section requests the identity of any non-dealer organization employed by the filer to submit transactions on its behalf. This data has been deleted because it is no longer necessary to administer the RTRS program.

Section E Signature

This section requests information about the municipal securities principal or executive officer executing the current Form RTRS, including name, designation as a municipal securities principal or executive officer, a certification that the information provided in the Form is accurate and complete, and a signature and date of execution. This section has been deleted because the information, other than the certification, is currently required as part of the information submitted under MSRB Rule G–40. A certification that the information submitted is accurate and complete will be automatically included on each submission of information or change thereto to revised Form RTRS.

Attachment Start-Up Testing

Sections ATT1 and ATT2: These sections requested certain information, relevant in 2004, about the types of trades being submitted and the filer's testing schedule. These sections have been deleted because the data is obsolete.

New Information Required by Revised Form RTRS

As noted above, the information requested in revised Form RTRS has been organized in four categories: Business Activities, Trade Reporting Identifiers, Designated Contacts and Submission and Feedback. Each of the sections will contain data transferred from current Form RTRS as described above. Some sections will request new information, as described below.

Following log-in through the filer's Gateway account, each submitter will be required to either affirm or edit previously submitted information for each of the categories listed above. In addition, the following sections will request new information:

• Business Activities

This section includes certain data from current Form RTRS and allows the filer to identify one or more types of transactions engaged in by the filer, including transactions as a broker's broker. Current Form RTRS limited the number of types of transactions that could be designated.

• Trade Reporting Identifiers

This section includes certain data from current Form RTRS and adds identifiers, if applicable, for broker's brokers transactions.

The MSRB anticipates that use of revised Form RTRS will reduce total Form RTRS filings significantly, reducing the regulatory burden on dealers and lowering MSRB operational costs. New tools developed since 2004 allow dealers to easily and effectively manage staff access to MSRB market transparency submission systems using the MSRB Gateway system. Using current Form RTRS to manage staff access to RTRS Web, instead of the MSRB Gateway account management tools, creates unnecessary form filings.[10] Further, the design of revised Form RTRS reflects current practices in user interface design, including contextual help, printable output, and other improvements. Revised Form RTRS will continue to be available, however, only to authorized individuals in a secure, password protected manner.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[11] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will facilitate transactions in municipal securities and remove impediments to and perfect the mechanism of a free and open market. The proposed rule change will be a step in advancing the MSRB's long term policy of improving price transparency. Further, implementation of revised Form RTRS will improve compliance with the MSRB's requirements for real-time reporting by allowing dealers to submit information necessary to process trades in a more efficient and timely manner, and reduce steps necessary to make post-filing changes, thereby decreasing the likelihood of reporting failures resulting from inaccurate processing of information, and improving the efficient working of RTRS. In addition, the proposed rule change adds new functionalities to allow dealers to separately identify trades when acting as a broker's broker.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or

[10] An internal study of filings showed that a majority of current Form RTRS filings are made solely for the purpose of managing RTRS Web user accounts.

[11] 15 U.S.C. 78o–4(b)(2)(C).

appropriate in furtherance of the purposes of the Act. The proposed rule change will not impose any additional burden on dealers because it will not require dealers to obtain or submit additional information to fulfill the requirements of the proposed rule change. Further, the MSRB believes that the proposed rule change will reduce the regulatory burden on dealers by providing a streamlined facility for entering information necessary to process trades correctly and by reducing the necessity for post-filing amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2013–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2013–03. 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 the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2013–03, and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05890 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69071; File No. SR–BX–2013–020]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter V, Regulation of Trading on BX Options, Section 6, Obvious Errors

March 7, 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 26, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Regulation of Trading on BX Options, Section 6, Obvious Errors, to replace the current mid-point test applied to the definition of Theoretical Price.

The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

Chapter V Regulation of Trading on BX Options

* * * * *

Sec. 6 Obvious Errors

(a) BX shall either nullify a transaction or adjust the execution price of a transaction that meets the standards provided in this Section.

(b) No change.

(c) *Definition of Theoretical Price.* For purposes of this Section only, the Theoretical Price of an option series is,

(i) If the series is traded on at least one other options exchange, the [mid-point of the] *last* National Best Bid *price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction* [and Offer (''NBBO'')], just prior to the transaction; or

(ii) No change.

(d)–(e) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to help Participants to better manage their risk by modernizing the Exchange's Obvious Errors rule. Chapter V, Section 6 governs obvious and catastrophic errors. Obvious errors are calculated under the rule by determining a theoretical price and determining, based on objective standards, whether the trade should be nullified or adjusted. The rule also contains a process for requesting an obvious error review. Certain more substantial errors may fall under the category of a catastrophic error, for which a longer time period is permitted to request a review and for which trades can only be adjusted (not nullified). Trades are adjusted pursuant to an adjustment table that, in effect, assesses an adjustment penalty. By adjusting trades above or below the theoretical price, the Rule assesses a ''penalty'' in that the adjustment price is not as favorable as the amount the party making the error would have received had it not made the error.

Currently, Chapter V, Section 6 provides that the definition of the Theoretical Price of an option is: (i) If the series is traded on at least one other options exchange, the mid-point of the National Best Bid and Offer (''NBBO''), just prior to the transaction; or (ii) if there are no quotes for comparison purposes, as determined by MarketWatch as defined in Chapter I.

The Exchange believes that in certain situations the application of the rule when determining to nullify or adjust transactions may lead to an unfair result for one of the parties to the transaction, particularly where the market for the affected series includes a bid price that is relatively small (for example, $0.50) and a substantially higher offer (for example $5.00). The result is that a transaction to sell that occurs correctly on the bid at $0.50 could be adjusted based on the midpoint of the NBBO, which is, in this example, $2.75. In such a case, the result is unfair to the bidder at $0.50, whose price would be adjusted based on the Theoretical Price of $2.75, and an unjust enrichment to the seller, who is entitled to $0.50 based on the bid, but who would receive the adjusted price of over $2.00 higher because of the rule, and not due to market conditions.

Accordingly, the proposal would re-define ''Theoretical Price'' to mean either the last National Best Bid price with respect to an erroneous sell transaction or the last National Best Offer price with respect to an erroneous buy transaction, just prior to the trade. The purpose of this provision is to establish a Theoretical Price that is clearly defined when there are quotations to compare to the erroneous transaction price, and to eliminate the scenario above that arises from the ''mid-point'' test when the NBBO is particularly wide. The Exchange notes that other options exchanges previously employed the mid-point test but changed it to the NBBO test.

When another options exchange's comparable rule was first adopted, the Commission stated that it ''* * * considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an 'obvious error' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an 'obvious error' has occurred, and the adjustment or nullification of a transaction because an obvious error is considered to exist, should be based on specific and objective criteria and subject to specific and objective procedures * * * The Commission believes that Phlx's proposed obvious error rule establishes specific and objective criteria for determining when a trade is an 'obvious error.' Moreover, the Commission believes that the Exchange's proposal establishes specific and objective procedures governing the adjustment or nullification of a trade that resulted from an 'obvious error.' '' [3]

2. Statutory Basis

BX believes that its proposal is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, by helping Exchange members better manage the risk associated with potential erroneous trades. Specifically, the Exchange believes that the proposal is consistent with these principles, because it sets forth an objective process based on specific and objective criteria and subject to specific and objective procedures. In addition, the Exchange has again weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. Accordingly, the Exchange has determined that defining the Theoretical Price of an option with reference to the NBBO is appropriate and consistent with the aforementioned principles.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal does not impose an intra-market burden on competition, because the new definition of Theoretical Price will apply to all Options Participants. Nor will the proposal impose a burden on competition among the options exchanges, because of the vigorous competition for order flow among the options exchanges. BX competes with 10 other options exchanges in a highly competitive market, where market participants can easily and readily direct order flow to competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[3] *See* Securities Exchange Act Release No. 49785 (May 28, 2004), 69 FR 32090 (June 8, 2004) (SR–Phlx–2003–68).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–020. 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–BX–2013–020 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05877 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69082; File No. SR–CBOE–2013–030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Regulation NMS Plan To Address Extraordinary Market Volatility

March 8, 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 March 7, 2013, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its rules to address certain option order handling procedures and quoting obligations on the Exchange after the implementation of the market wide equity Plan to Address Extraordinary Market Volatility (the ''Plan'').

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to update Exchange rules to correspond with the Plan. Specifically, the Exchange is proposing to make proposed changes to Exchange Rules Rule 6.2B, ''Hybrid Opening System (''HOSS''), 6.3A, ''Equity Market Trading Halt,'' Rule 6.14A, ''Hybrid Agency Liaison,'' Rule 6.25, ''Nullification and Adjustment of Options Transactions,'' Rule 6.53, ''Certain Types of Orders Defined,'' Rule 6.53C, ''Complex Orders on the Hybrid System,'' Rule 8.7, ''Obligations of Market-Makers, Rule 8.13, ''Preferred Market-Maker Program,'' Rule 8.15A ''Lead Market-Maker in Hybrid Classes,'' Rule 8.85, ''DPM Obligations,'' and Rule 8.93, ''e-DPM Obligations.'' The Exchange believes these modifications will protect investors because when an underlying security is in a limit or straddle state (collectively referred to in this filing as a ''limit up-limit down state''), there will not be a reliable price for the security to serve as a benchmark

for the price of the option. In addition, the width of the markets might be compromised and, thus, the quality of execution for retail customers. The Plan is more fully explained below.

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, the Exchange, in conjunction with the other national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Securities Exchange Act of 1934 (the ''Act'').[3] The Plan is primarily designed to, among other things, address extraordinary market volatility in NMS stocks, protect investors, and promote fair and orderly markets. The Plan provides for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of specified price bands, as defined in Section I(N) of the Plan. These requirements would be coupled with trading pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or monetary gaps of liquidity).

The Plan was filed on April 5, 2011 by the Participants for publication and comment.[4] The Participants requested the Commission approve the Plan as a one-year pilot. On May 24, 2012, the Participants filed an amendment to the Plan which clarified, among other things, the calculation of the reference price, as defined in Section I(T) of the Plan, potential for order type exemption, and the creation of an Advisory Committee.[5] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[6]

Under the Plan, Participants are required to adopt certain rules in order to comply. Specifically, Section VI of the Plan sets forth the limit up-limit down requirements of the Plan, and in particular, that all trading centers in NMS Stocks, including both those operated by the Participants and those operated by member of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the lower price band or above the upper price band for an NMS Stock, consistent with the Plan. Price Bands will be calculated by Securities Information Processors (''SIPs'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act. As proposed, and approved, the Plan will be implemented, as a one year pilot program, in two phases.[7] Phase I will become effective April 8, 2013 and apply to Tier I NMS Stocks per Appendix A of the Plan, and Phase II would become effective six months later, or earlier if announced by the SIPs 30 days prior, and would apply to all NMS Stocks.

Under the Plan, when one side of the market for an individual security is outside the applicable price band, the SIPs will be required to disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security will enter a limit state. Trading for that security will exit the limit state if, within 15 seconds of entering the limit state, all limit state quotations were executed or cancelled. If the market does not exit a limit state within 15 seconds, then the primary listing exchange will declare a five-minute trading pause, which will be applicable to all markets trading the security.

Though the Plan is primarily designed for equity markets, the Exchange believes it will, indirectly, potentially impact the options markets as well. Thus, as stated above, the Exchange is proposing to amend its rules to ensure the option markets are not harmed as a result of the Plan's implementation. As such, the Exchange is proposing to amend various rules to reflect such changes. The Exchange believes such changes will protect participants, the Exchange and investors in general.

First, the Exchange is proposing to add Rule 6.3A to codify the changes throughout the Exchange's rules. Currently, Rule 6.3A is titled ''Equity Market Trading Halts'' and has been deleted in its entirety. The Exchange is proposing to amend the title to ''Equity Market Plan to Address Extraordinary Market Volatility'' and add text. Rule 6.3A will define the Plan as it applies to the Exchange. In addition, the proposed rule change will describe the location of the other rule changes associated with the Plan. In essence, the proposed changes to Rule 6.3A will serve as a roadmap for the Exchange's universal changes due to the implementation of the Plan. The proposed rule changes will list changes to Exchange order types, order handling, obvious error, and market-maker quoting obligations that the Exchange is proposing to make in connection with the implementation of the Plan. These rule changes are more thoroughly described in various sections of the Exchange Rulebook, but having one place referencing all rules associated with the Plan will serve to better protect investors by making the other rules easily located. The Exchange believes the proposed changes to Rule 6.3A will describe to Trading Permit Holders (''TPHs''), and other participants, where to find the changes associated with the Plan and will, thus, attempt to maintain a more orderly market.

Next, the Exchange is proposing to modify its opening procedures under Rule 6.2B, ''Hybrid Opening System'' (''HOSS''). The Exchange is proposing to add an Interpretation and Policy .07 to clarify that if the underlying security for a class of options enters into a limit up-limit down state when the class moves to opening rotation, any market orders entered that trading day will be cancelled. The Exchange believes that by cancelling the market orders, it will comply with the Plan by not allowing orders outside of the Price Bands to execute. As an exception, market orders that are considered limit orders pursuant to Rule 6.13(b)(iv) and entered the previous trading day will remain in the Book. The Exchange is proposing to allow such market orders to remain in the Book because these essentially act as limit orders at the minimum increment. Cancelling such orders could potentially cause such orders to lose their priority with respect to other market orders in the Book.

Next, the Exchange is proposing to modify Exchange Rule 6.14A, ''Hybrid Agency Liaison—(HAL).'' Exchange Rule 6.14A currently governs the operation of HAL, a feature within the Hybrid System that provides automated order handling in designated classes trading on the Hybrid System for qualifying electronic orders that are not automatically executed by the Hybrid System. The Exchange determines the eligible order size, eligible order types, eligible origin code (i.e. public customer orders, non-Market-Maker broker-dealer orders and Market-Maker broker-dealer orders), and classes in which HAL is activated.[8] When the Exchange receives a qualifying order that is marketable against the National Best Bid or Offer (''NBBO'') and/or the Exchange's best

[3] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[4] *Id.*

[5] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[6] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[7] *Id.*

[8] Rule 6.14A(a).

bid or offer (''BBO'') [9], HAL electronically exposes the order [10] at the NBBO price to allow Market-Makers appointed in that class, as well as all TPHs acting as agent for orders, at the top of the Exchange's book in the relevant series (or all TPHs if allowed by the Exchange) to step-up to the NBBO price.

Because the underlying security of the option in HAL affects the pricing of the eventually executed order, the Exchange is proposing to make changes to Rule 6.14A to reflect the implementation of the Plan. More specifically, the Exchange is proposing to amend Rule 6.14A to modify the behavior of HAL of a market order while the underlying security of the option is in a limit up-limit down state. If an underlying security shall enter a limit up-limit down state while a HAL of a market order is in process, the auction will end early, upon the entering of the state. Any unexecuted portion of the market order shall be cancelled. The Exchange believes the proposed rule changes will best protect the TPH by ensuring it does not receive an executed order with an unanticipated price due to the change in the underlying security. In addition, by ending the auction early, the Exchange is providing a better chance for the TPH to get its order executed as it is in the TPH's interest for an earlier execution versus a later one.

Next, the Exchange is proposing to modify how an electronic complex order request for responses (''RFR'') auction (''COA'') will operate while the underlying security of at least one of the options has entered a limit state. Exchange Rule 6.53C(d) currently describes the general COA process. Generally, on a class-by-class basis, the Exchange may activate COA, which is a process by which eligible complex orders [11] are given an opportunity for price improvement before being booked in the electronic complex order book (''COB'') or once on a PAR workstation. On receipt of a COA-eligible order and request from a TPH representing the order that it be COA'd, the Exchange will send an RFR message to all TPHs who have elected to receive RFR messages.[12] Each Market-Maker with an appointment in the relevant option class and each TPH acting as agent for orders resting at the top of the COB in the relevant options series may then submit responses to the RFR message during the Response Time Interval.[13] The Exchange is proposing to add to the COA rule that if, during COA of a market order, the underlying security of an option enters a limit up-limit down state, the COA will end upon the entering of that state and the remaining portion of the order, if a market order, will cancel. The Exchange believes this change will best protect investors as, must [sic] like HAL, the TPH may receive a skewed price of the underlying security which would impact the price of the option.

Next, the Exchange is proposing to amend Exchange Rule 6.25 relating to the nullification and adjustment of options transactions. Under the current rule, an Obvious Pricing Error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by a specified amount. For purpose of the rule, the ''Theoretical Price'' of an option series is currently defined, for series traded on at least one other options exchange, as the last national best bid price with respect to an erroneous sell transaction and the last national best offer price with respect to an erroneous buy transaction, just prior to the trade. If there are no quotes for comparison, Trading Officials [14] determine the Theoretical Price.

Because the theoretical price may be unreliable due to the underlying security entering a limit up-limit down state, the Exchange is proposing to amend the Exchange obvious error rules to provide that the Exchange may not nullify or adjust executed orders when the underlying security is in a limit up-limit down state. The Exchange is also proposing to add language specifying that transactions in options that overlay a security that is in a limit state may, however, be reviewed on an Exchange motion. The Exchange believes this will best protect the market because it allows limit orders to be executed on the Exchange while the underlying securities are in limit states regardless of the calculated theoretical price. Finally, the Exchange is proposing to add language to specify that this provision will be on a one year pilot basis to coincide with the Plan. The Exchange will provide the Commission with data and analysis during the duration of this pilot as requested.

In addition, the Exchange believes the proposed rule change would protect against TPHs getting a potential second look at transactions that happened during limit states that could be unfair to other participants. The proposed rule change would encourage added liquidity on the Exchange as the proposed changes would help to ensure that limit orders that are filled during a limit up-limit down state would have certainty of execution. By allowing the Exchange to continue to review such transactions on their own motion, the Exchange is further attempting to protect investors and maintain an orderly market. The Exchange believes that the combination of encouraging TPHs to participate on the market and allowing a safeguard to erroneous trades will provide the best solution during the pilot of the Plan.

Next, the Exchange is proposing to modify Rule 6.53 and 6.53C and, more specifically, how certain Exchange order types will be handled while the underlying security of such orders enters into a limit up-limit down state. The proposed rule change will, among other things, address how market orders,[15] market-on-close,[16] stop orders,[17] and stock option orders [18] will

[9] HAL will not electronically expose the order if the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order.

[10] The duration of the exposure period may not exceed one second. Rule 6.14A(c) describes the manner in which an exposed order is allocated under HAL, and Rule 6.14A(d) lists the circumstances in which an exposure period would terminate early.

[11] An eligible complex order, referred to in Rule 6.53C as a ''COA-eligible order,'' means a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type and complex order origin type (*i.e.* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange). All determinations by the Exchange on COA-eligible order parameters are announced to Trading Permit Holders by Regulatory Circular. See Rule 6.53C(d)(i)(2) and Interpretation and Policy .01 to Rule 6.53C.

[12] *See* Rule 6.53C(d)(ii). The RFR message will identify the component series, the size of the COA-eligible order and any contingencies, but will not identify the side of the market.

[13] *See* Rule 6.53C(d)(iii). A ''Response Time Interval'' means the period of time during which responses to the RFR may be entered, the length of which is determined by the Exchange on a class-by-class basis but may not exceed three seconds. *See* Rule 6.53C(d)(iii)(2).

[14] The term ''Trading Officials'' currently means two Exchange members designated as Floor Officials and one member of the Exchange's staff designated to perform Trading Official functions. *See* Rules 6.25.02 and 24.16.02.

[15] *See* Exchange Rule 6.53(a) which defines a market order as ''an order to buy or sell a stated number of options contracts at the best price obtainable when the order reaches the post.''

[16] *See* Exchange Rule 6.53(c)(ii) which defines a market-on-close order designation as an order ''to be executed as close as possible to the closing bell, or during the closing rotation, and should be near to or at the closing price for the particular series of option contracts.''

[17] *See* Exchange Rule 6.53(c)(iii) which defines a stop order contingency to an order as one that ''to buy or sell when the market for a particular option contract reaches a specified price on the CBOE floor.''

[18] *See* Exchange Rule 6.53C(a)(2) which defines a stock-option order as ''an order to buy or sell a stated number of units of an underlying stock or a

Continued

function on the Exchange upon the implementation of the Plan. More specifically, the Exchange is proposing to add language to clarify that: (a) Market orders will be returned during limit up-limit down states, (b) market-on-close orders will not be elected if the underlying security is in a limit up-limit down state,[19] (c) stop orders will be held while the underlying security is in a limit up-limit down state, and (d) stock-option orders will only execute if the calculated stock price is within the permissible bands.[20] In addition, during a limit up-limit down state, if a message is sent to replace a limit order with a market order, the resting limit order will be cancelled and the replaced market order will also be cancelled.

When a stock is in a limit or straddle state, while options trading will continue, there will not be a reliable price for a security to serve as a benchmark for the price of the option. In addition, without a reliable underlying stock price, there is an enhanced risk of errors and improper executions. With these concerns in mind, the Exchange believes that adding a level of certainty for TPHs will encourage participation on the Exchange whilst the underlying securities are in limit up-limit down states. Thus, the Exchange believes handling these certain orders in this way will best protect the investor after the implementation of the Plan by not allowing execution at unreasonable prices due to the shift in the stock prices.

Finally, the Exchange is proposing to eliminate all market maker obligations for options in which the underlying security is in a limit up-limit down state while the underlying security in is in the limit state. Currently, Exchange Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 impose certain obligations on Market-Makers,[21] PMMs,[22] LMMs,[23] DPMs,[24] and e-DPMs,[25] respectively, including obligations to provide continuous electronic quotes. Upon implementation of the recent rule change to Market-Maker's continuous quoting obligations,[26] Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 will require that Market-Makers generally maintain continuous electronic quotes as follows:

- Rule 8.7(d)(ii)(B) will require that Market-Makers provide continuous electronic quotes when quoting in a particular class on a given trading day in 60% of the non-adjusted option series of the Market-Maker's appointed class that have a time to expiration of less than nine months;
- Rule 8.13(d) will require that PMMs provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair[27] of the non-adjusted option series of each class for which it receives Preferred Market-Maker orders;
- Rule 8.15A(b)(i) will require that LMMs provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair of the non-adjusted option series within their assigned classes;
- Rule 8.85(a)(i) will require DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair of the non-adjusted option series of each class allocated to it; and
- Rule 8.93 will require e-DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair of the non-adjusted option series of each allocated class.

Exchange Rules 8.13, 8.15B, and 8.87 provide that PMMs, LMMs, and DPMs, and e-DPMs, respectively, generally will receive the following participation entitlements in their assigned classes when quoting at the best price if they satisfy their obligations and other conditions set forth in the rules:

- Rule 8.13(c) provides that a PMM will receive a participation entitlement of 40% when there are two or more Market-Makers quoting at the best price on the Exchange and 50% when there is only one other Market-Maker quoting at the best price on the Exchange;
- Rule 8.15B(c) provides that an LMM will receive a participation entitlement of 50% when there is one Market-Maker also quoting at the best price on the Exchange, 40% when there are two Market-Makers also quoting at the best price on the Exchange, and 30% when there are three or more Market-Makers

security convertible into the underlying stock * * * coupled with the purchase or sale of options contract(s) on the opposite side of the market.''

[19] During closing rotation, the Exchange will continue to re-evaluate the state of underlying securities for which the overlying securities have not yet been closed. If upon re-evaluation the underlying security should exit a limit up-limit down state, a market-on-close order may be executed.

[20] If the calculated price of a stock-option order is not within the permissible Price Bands, the stock-option order will be routed for manual handling.

[21] See Exchange Rule 8.1, which defines a ''Market-Maker'' as ''an individual Trading Permit Holder or a TPH organization that is registered with the Exchange for the purpose of making transactions as a dealer specialist on the Exchange * * *.''

[22] See Exchange Rule 8.13, which defines a ''Preferred Market-Maker'' as a specific Market-Maker designated by a Trading Permit Holder to receive that Trading Permit Holder's orders in a specific class.

[23] See Exchange Rule 8.15A, which defines a ''Lead Market-Maker'' as a Market-Maker in good standing appointed by the Exchange ''in an option class for which a DPM has not been appointed * * *.''

[24] See Exchange Rule 8.80, which defines a ''Designated Primary Market-Maker'' as a ''TPH organization that is approved by the Exchange to function in allocated securities as a Market-Maker * * * and is subject to the obligations under Rule 8.85 * * *.''

[25] See Exchange Rule 8.92, which defines an ''Electronic DPM'' as a ''TPH Organization that is approved by the Exchange to remotely function in allocated option classes as a DPM and to fulfill certain obligations required of DPMs * * *.''

[26] The Exchange recently proposed to, among other things, (a) reduce to 90% the percentage of time for which a Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day and (b) to increase to the lesser of 99% or 100% minus one call-put pair the percentage of series in which Lead Market-Makers, Designated Primary Market-Makers and Electronic Designated Primary Market-Makers must provide continuous electronic quotes in their appointed classes, which proposed rule change was immediately effective upon filing. *See* Securities Exchange Act Release No. 67410 (July 11, 2012), 77 FR 42040 (July 17, 2012) (SR–CBOE–2012–064); *see also* Securities Exchange Act Release No. 67644 (August 13, 2012), 77 FR 49846 (August 17, 2012) (SR–CBOE–2012–077) (immediately effective rule change to delay the implementation date of the proposed rule change in rule filing SR–CBOE–2012–064 and to indicate that the Exchange will announce the new implementation date by Regulatory Circular); *see also* Securities and Exchange Act Release No. 68218 (November 13, 2012), 77 FR 69667 (November 20, 2012) (SR–CBOE–2012–106) (immediately effective rule change to further delay the implementation date of the proposed rule change in rule filing SR–CBOE–2012–064 and to indicate that the Exchange will announce the new implement date by Regulatory Circular). In addition, the Exchange recently filed an effective rule proposing to exclude series that have a time to expiration of nine months or more from Exchange Preferred Market Maker's continuous quoting obligation. *See* Securities and Exchange Act Release No. 68691 (January 18, 2013), 78 FR 5548 (January 25, 2013) (SR–CBOE–2013–008). Finally, the Exchange recently filed a rule proposing to exclude series that are added during the trading day from Exchange Market Maker's continuous quoting obligation. See Securities and Exchange Act Release No. 34–68944, 78 FR 12377. The rule text in this filing includes the effective (but not implemented) changes to the rule text made by rule filings SR–CBOE–2012–064 and SR–CBOE–2013–008. The Exchange expects to implement the effective rule changes to quoting obligations in filings SR–CBOE–2012–064 and SR–CBOE–2013–008 in conjunction with the approval of the proposed rule change in SR–CBOE–2013–019.

[27] A ''call-put pair'' is one call and one put that cover the same underlying instrument and have the same expiration date and exercise price.

also quoting at the best price on the Exchange; [28] and

• Rule 8.87(b)(2) provides that the collective DPM/e-DPM participation entitlement will be 50% when there is one Market-Maker also quoting at the best price on the Exchange, 40% when there are two Market-Makers also quoting at the best price on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best price on the Exchange.[29]

Once the Exchange implements the rule change referenced above, Exchange Rule 1.1(ccc) will provide that a Market-Maker who is obligated by CBOE Rules to provide continuous electronic quotes will be deemed to have provided ''continuous electronic quotes'' if the Market-Maker provides electronic two-sided quotes for 90% of the time that the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. The rule will still provide that if a technical failure or limitation of a system of the Exchange prevents the Market-Maker from maintaining, or from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure will not be considered in determining whether the Market-Maker has satisfied the 90% quoting standard with respect to that option class. In addition, the rule will still provide that the Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

Because prices may be skewed due to the underlying security being in a limit up-limit down state, the Exchange is proposing to eliminate all market-maker quoting obligations in series of options that the underlying security is currently in a limit up-limit down state. Because of the direct relationship between an options price and the price of the associated underlying security, the Exchange believes eliminating all Market-Maker obligations in connection with the implementation of the Plan is the most effective way to ensure the options markets will not be compromised. Because a bid or offer of an underlying security may not be executable due to a limit or straddle state, the ability to hedge the purchase or sale of an option may not be possible or, in the least, is at risk. Because of this reason, the Exchange is anticipating that Exchange Market-Makers will be forced to change behaviors. In addition, the Exchange believes other options markets will be implementing similar changes. In an effort to protect the investors in the options market while the underlying security is in a limit up-limit down state, the Exchange believes that eliminating quoting obligations is the more effective way for this protection.

The Exchange, however, is proposing that Market-Makers may still receive participation entitlements pursuant to the proposed rules in all series in their assigned classes in which they are quoting, even in series in which they are not required to provide continuous electronic quotes under the Exchange Rules. Market-Makers already receive participation entitlements in series they are not required to quote. For example, a DPM is currently required to provide continuous electronic quotes in at least 90% of the non-adjusted option series of each multiply listed option class allocated to it and in 100% of the non-adjusted option series of each singly listed option class allocated to it for 99% of the trading day.[30] If the DPM elects to quote in 100% of the non-adjusted series in a multiply listed option class allocated to it, it will receive a participation entitlement in all of those series when quoting at the best price, including the 10% of the series in which it is not required to quote in. Thus, under the proposed rule change, the market would continue to function as it does now with respect to how entitlements are allocated to Market-Makers. The Exchange believes this benefit is appropriate, as it incentivizes Market-Makers to quote in as many series as possible in their appointed classes, even those series in which the underlying security has entered into a limit up-limit down state. The Exchange is attempting to better encourage Market-Makers to quote though they will not be obligated to. If they do choose to quote, the Exchange believes they should be entitled to receive the Entitlement for such quoting as appropriate.

The Exchange believes the combination of these modifications will protect investors because when an underlying security is in a limit up-limit down state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. In addition, the width of the markets might be compromised and, thus, the quality of execution for retail customers. At the same time, the Exchange believes the proposed rule change will create more certainty on the options markets encouraging more investors to participate despite the changes associated with the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[31] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [32] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [33] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed changes will be in accordance with the Act as they are merely intended to ensure the options markets will continue to remain just and equitable with the implementation of the Plan which is intended to reduce the negative impacts of a sudden, unanticipated price movement in NMS stocks. The proposed rule changes would promote this intention in the options markets while protecting investors participating there. In addition, similar rule changes will be adopted by other markets in the national market system in a coordinated manner promoting the public interest. Creating a more orderly market will promote just and equitable principles of trade by allowing investors to feel more secure in their participation in the national

[28] If more than one LMM is entitled to a participation entitlement, the entitlement will be distributed equally among eligible LMMs.

[29] The participation entitlements of PMMs, LMMs, DPMs and e-DPMs are based on the number of contracts remaining after all public customer orders in the book at the best price on the Exchange have been satisfied. Additionally, a PMM, LMM, DPM or e-DPM may not be allocated a total quantity greater than the quantity for which the PMM, LMM, DPM or e-DPM is quoting at the best price. *See* Rules 8.13(c)(i) and (ii) (PMMs), 8.15B(b) and (c) (LMMs), and 8.87(b)(1)(ii) and (iii) (DPMs and e-DPMs).

[30] As discussed above, this obligation will change upon implementation of a recent rule change. *See supra* note 26.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] *Id.*

market system after the implementation of the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intramarket competition because it applies to all TPHs equally. The Exchange does not believe the proposed changes will impose any burden on intermarket competition as the changes are merely being made to protect investors with the implementation of the Plan. In addition, the proposed changes will provide certainty of treatment and execution of options orders during periods of extraordinary market volatility.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2013–030 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 No. SR–CBOE–2013–030. 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 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 No. SR–CBOE–2013–030 and should be submitted on or before March 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05884 Filed 3–13–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8227]

Waiver of Restriction on Assistance to the Central Government of Somalia

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Somalia, and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: March 29, 2012.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

This document was received by the Office of the Federal Register on March 8, 2013.

[FR Doc. 2013–05819 Filed 3–13–13; 8:45 am]

BILLING CODE 4710–26–P

[34] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending March 2, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–1999–6663.

Date Filed: February 26, 2013.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: March 19, 2013.

Description: Application of United Parcel Service Co. (''UPS'') requesting renewal of its certificate of public convenience and necessity for Route 569, which authorizes UPS to engage in foreign air transportation of property and mail over the following U.S.–Mexico city-pair route segments: Austin, Texas–Monterrey; Houston, Texas–

Mexico City; Louisville, Kentucky–Guadalajara; Louisville, Kentucky–Mexico City; Louisville, Kentucky–Monterrey; San Antonio, Texas–Guadalajara; and San Antonio, Texas–Monterrey.

Barbara J. Hairston,

Acting Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–05880 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Meeting. Pursuant to section 10(A) (2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 24—8:30 a.m. to 4:00 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue SW.—Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dunderman@faa.gov*. Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 8, 2013.

Catherine A. Bigelow,

Manager, Research and Development Management Division.

[FR Doc. 2013–05908 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2013–0002–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on December 31, 2012.

DATES: Comments must be submitted on or before April 15, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On December 31, 2012, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which the agency was seeking OMB approval. 77 FR 77181. FRA received no comments in response to this notice.

Before OMB decides whether to approve a proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection request (ICR) and the expected burden, and is being submitted for clearance by OMB as required by the PRA.

Title: Electronic Device Distraction (EDD) Survey.

OMB Control Number: 2130–NEW.

Type of Request: Regular approval of a new collection of information.

Affected Public: Railroad Employees.

Abstract: Operating railroad equipment while being distracted by the use of electronic devices (e.g., phones, game consoles, personal computers, etc.) is known to be a factor in some accidents and suspected of being the cause of many others in the railroad industry. It is also known that such use is dangerous, as evidenced by several high profile accidents in the railroad industry, and by research on distraction in other transportation modes. Consequently, the Department of Transportation (DOT) and the Federal Railroad Administration (FRA) have a keen interest in devising counter measures to reduce the incidence of electronic device distraction (EDD) in the railroad industry. In order to devise effective countermeasures, FRA believes a survey of select rail employees would be extremely beneficial. Therefore, FRA proposes to sample railroad employees spread across the jobs of conductors, engineers, signalmen, maintenance of way, car repair personnel, machinists, and supervisors. The agency's interest is shared by rail labor and management representatives, who are strongly supporting this survey and cooperating in its administration. All involved realize that effective counter measures to EDD must be based on a trustworthy understanding of the following: (1) Who is engaged in EDD, (2) under what circumstances they use these devices, (3) which devices are used, (4) reasons for use, and (5) frequency of use for each kind of device. Effective interventions cannot be designed, implemented, or evaluated without accurate information on these topics. The proposed survey is designed to provide this information, first as a baseline, and, in four

subsequent years, as a way of tracking and evaluating change. For reasons of effectiveness and efficiency, the survey will be conducted primarily via the Web, augmented as needed with email communications.

Form Number(s): FRA F 6180.158

Annual Estimated Burden Hours: 1,245 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent electronically via email to the Office of Information and Regulatory Affairs (OIRA) at the following address: *oira_submissions@omb.eop.gov*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 8, 2013 .

Michael Logue,

Associate Administrator for Administration, Federal Railroad Administration.

[FR Doc. 2013–05835 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2013–02; Low-Speed, Wheel-Climb Derailments of Passenger Equipment With ''Stiff'' Suspension Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2013–02 to alert railroads and other industry members about low-speed, wheel-climb derailments of certain passenger equipment designs having ''stiff'' suspension systems. These derailments have occurred when such equipment was negotiating track with a high degree of curvature and crosslevel variations (commonly referred to as ''track warp'') that were still within the limits set forth in FRA's Track Safety Standards. The findings from the derailment investigations conducted by FRA and the respective railroads highlight the need to ensure that passenger equipment suspension systems are suitable for more-demanding track conditions found in low-speed operating environments. To avoid similar low-speed, wheel-climb derailments, this notice recommends that railroads and other industry members evaluate the trackworthiness of certain passenger equipment to determine whether the suspension systems meet truck-equalization industry standards, prevent wheel climb, and control static wheel-load distribution under the conditions and within the limits described in the notice; and take appropriate action to address the derailment tendency, if any, of the evaluated equipment. In order to minimize the risk of suspension spring failure, this notice also recommends that railroads and other industry members assessing the fatigue life of suspension springs and their corresponding maintenance intervals use a fatigue-evaluation load equal to the equipment's full-capacity loading conditions.

FOR FURTHER INFORMATION CONTACT: Michelle Muhlanger, Deputy Regional Administrator, Region 1, Office of Railroad Safety, FRA, 55 Broadway Street, Cambridge, MA 02142, telephone (617) 494–2630; Gary Fairbanks, Staff Director, Motive Power and Equipment Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6322; 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

In response to increased performance objectives, such as higher operating speeds and increased passenger capacity, passenger equipment suspension systems are becoming stiffer [1] and more sophisticated, and may be approaching design limits. In many cases, engineering tradeoffs are made to meet performance objectives and satisfy specific system constraints (*e.g.,* clearances for existing tunnels or other infrastructure). An example is equipment using non-linear vertical springs, which provide variable stiffness as the vehicle load increases from AW0 (*i.e.,* empty vehicle ready to run) to AW3 (*i.e.,* vehicle with full-seated and full-standee load). Such tradeoffs have resulted in certain newer designs of equipment being operated over more-demanding track geometry conditions with lower margins of safety, from a derailment perspective, than older equipment designs. The static weight distribution and marginal wheel-load equalization that are characteristic of such suspension system designs can lead to wheel unloading. This is of particular concern because FRA has determined that the combination of high, lateral curving forces and wheel unloading is a major contributing factor to low-speed,[2] wheel-climb derailment tendency. Similar wheel-climb derailments are not as likely to occur at higher speeds on higher classes of track because track curvature is generally less sharp and the safety limits on track-warp variations on such track are more stringent. *See* Title 49 Code of Federal Regulations (CFR) 213.63 and 213.331.

Although the derailments prompting issuance of this safety advisory all occurred on Class 1 track at speeds of 15 mph or less, and did not result in any injuries, the consequences could have been much worse. For example, one of the derailments resulted in the derailed train fouling the adjacent track on which a National Railroad Passenger Corporation (Amtrak) Acela Express train was traveling. Had the circumstances been different, a significant collision could have occurred. Thus, the recommendations in this notice are important not only in preventing low-speed, wheel-climb derailments themselves but in preventing what may be more serious consequences of such derailments.

Although Federal regulations require suspension systems on Tier II [3] passenger equipment to reasonably prevent wheel climb and wheel unloading under all loading conditions and at all track speeds (*see* § 238.427), there is no equivalent requirement for Tier I passenger equipment (*see*

[1] Suspension systems that allow lower suspension deflection for the same load (*e.g.,* due to the use of less flexible springs).

[2] Fifteen mph or less. The maximum allowable operating speed for passenger trains on Class 1 track, as defined under 49 CFR 213.9, is 15 mph. All references in this notice to a section or other provision of a regulation are to a section, part, or other provision in 49 CFR.

[3] Tier II passenger equipment operates at speeds exceeding 125 mph but not exceeding 150 mph, whereas Tier I passenger equipment operates at speeds not exceeding 125 mph. *See* § 238.5.

§ 238.227). Further, while the March 13, 2013, final rule on vehicle/track interaction (VTI) safety standards will promote the safe interaction of all rail vehicles with the track over which they operate under a variety of conditions, the rule focuses on high-speed and high cant deficiency operations, and does not address—in particular—the prevention of the type of low-speed, wheel-climb derailment that is the focus of this notice.

During the development of the VTI rule and as a result of working with a number of railroads to investigate several low-speed, wheel-climb derailments at that time, FRA recognized the need to address such derailments more comprehensively. Specifically, FRA was concerned that there needed to be greater compatibility between certain designs of passenger equipment (*i.e.,* those having ''stiff'' suspension systems) and the lower track classes over which they operated, as such equipment was experiencing derailments while negotiating track with a high degree of curvature and with track warps that were still within the limits set forth in FRA's Track Safety Standards. The Railroad Safety Advisory Committee (RSAC) task force that was assigned to assist FRA in developing the VTI rule was initially tasked to consider addressing the issue in that rulemaking. However, the task force, with the concurrence of the full RSAC, recommended that the issue be addressed by an industry standard on truck equalization, rather than in the VTI rule. To that end, the American Public Transportation Association (APTA) issued a standard on truck equalization.[4] However, the APTA standard applies to passenger equipment suspension systems loaded in the AW0 condition only, as wheel load equalization was traditionally seen as an issue principally affecting empty cars. Although APTA members recently voted to re-open the standard to incorporate further lessons learned from recent derailment investigations, FRA recognizes that it will take some time to do so. This notice of safety advisory is intended to more fully address the issue in the meantime.

Discussion of Specific Recommendations

The first recommendation is that railroads and other industry members conduct a trackworthiness evaluation of certain passenger equipment to determine whether suspension systems meet truck-equalization industry standards, prevent wheel climb, and control static wheel-load distribution under certain conditions and within certain limits. Because the manufacturing process inherently results in small variances in some of the vehicle's components, vehicle designs necessarily include a nominal value for certain components, as well as tolerances for those components. The designs also specify tolerances for maintenance limits to account for in-service wear and degradation of components. Thus, a trackworthiness evaluation of a vehicle type's performance should also take into account the full range of component tolerances (*e.g.,* spring heights) and maintenance limits (*e.g.,* wheel wear). Railroads and industry members should be aware that vehicles may or may not exhibit derailment tendencies over the range of new vehicle component tolerances. Similarly, vehicles with in-service wear that are still operating within all maintenance tolerances may or may not exhibit derailment tendencies. Therefore, it is important to consider all combinations of component and maintenance tolerances in evaluating trackworthiness.

Although conducting such an evaluation at the design stage for new equipment is both desirable and feasible from a practical standpoint, FRA recognizes that it would be quite burdensome to conduct such an evaluation for all existing equipment. Therefore, FRA has focused the recommendations regarding existing equipment in this notice to situations that are easier to address or where the equipment is at greatest risk for experiencing similar derailments. Consequently, FRA is limiting the formal recommendations in this notice to existing equipment that (1) Is undergoing a redesign of its suspension system that will likely affect the low-speed trackworthiness performance of the vehicle; (2) is being placed in service over a new route that the railroad knows to have more demanding track geometry conditions; or (3) has experienced one or more low-speed, wheel-climb derailments that may have involved a combination of wheel unloading and track warp of 3 inches or less as a contributing factor.

In addition, if the results of a trackworthiness evaluation indicate that the equipment's performance does not meet one or more of the conditions described, FRA is recommending different levels of action depending on whether the equipment is new (or redesigned) or existing. For new equipment or equipment undergoing a redesign of its suspension system that will likely affect the low-speed trackworthiness performance of the vehicle, FRA recommends that the suspension system be redesigned to perform according to the conditions described. For existing equipment, FRA is recommending that appropriate action be taken to mitigate the derailment tendency. This would include redesigning the equipment or taking other appropriate action, such as ensuring that the track over which the equipment is operating is maintained to standards appropriate for the specific equipment type, or placing operational restrictions on the equipment, or both. FRA believes that this approach makes the recommendations more effective and focused.

FRA notes in particular that the reason for including in these recommendations existing equipment that is being placed in service over a new route that the railroad knows to have more demanding track geometry conditions is because the equipment may be subjected to different track conditions (*e.g.,* a route with higher-degree-of-curvature track or a route with track that is maintained to lower standards) and interact differently with the track, potentially leading to similar wheel-climb derailments. In addition, FRA believes that some railroads may not be aware that the equipment they are operating is prone to such derailments because they are already taking some action that mitigates the derailment tendency of the equipment. For example, a railroad may have decided, for unrelated reasons, to maintain the track over which the equipment travels to higher, Class 2 standards, even though the track is formally designated as Class 1. If the railroad were to stop maintaining this track to Class 2 standards without taking any other action to mitigate the risk (*e.g.,* by putting operational restrictions on the equipment), it is possible that the equipment would begin exhibiting similar derailment tendency.

Recognizing that certain newer suspension system designs may result in equalization performance in the AW3 loading condition that makes the equipment more prone to derailment than when it is in the AW0 loading condition, FRA believes it is important to evaluate the equalization of suspension systems in the AW3 loading condition as well. Accordingly, FRA recommends that railroads and other industry members ensure that such evaluation is conducted using the AW3 loading condition for all new passenger equipment and for the three categories of existing equipment identified in this

[4] *See* APTA SS–M–014–06, Standard for Wheel Load Equalization of Passenger Railroad Rolling Stock (2007).

notice. This will help ensure that the suspension system will be able to prevent wheel unloading when the equipment is loaded to capacity.

Although assessment of wheel-load equalization is important in preventing the wheel unloading and wheel climb indicated in the subject derailments, FRA has determined that the tests and analyses typically used for evaluating wheel-climb and wheel-unloading tendency could be enhanced by including a curving-performance assessment with track-warp variations at the Class 1 limits [5] for a broad spectrum of wavelengths. For example, in reviewing the information available for eight recent low-speed, wheel-climb derailments [6] involving multi-level vehicles,[7] it was discovered that three of the vehicles derailed at or near track warps of a broad spectrum of wavelengths (*i.e.,* a 3-inch track warp in 62 feet, a 1.75-inch track warp in 30 feet, and a 2-inch track warp in 10 feet). Although track geometry data was not recorded for all eight incidents, based on the computer modeling conducted by the equipment manufacturer during the derailment investigations to assess the capabilities of the subject vehicle type, it is likely that the five other vehicles derailed under similar circumstances. Thus, FRA is recommending that all new, and the three categories of existing, passenger equipment identified in this notice be evaluated to determine whether the suspension systems prevent wheel climb while negotiating, at a minimum, a 12-degree curve with a coefficient of friction (COF) representative of dry track conditions (*i.e.,* 0.5) and 3-inch track warp variations with the following wavelengths: 10, 20, 40, and 62 feet. FRA also recommends that, under both the AW0 and AW3 loading conditions, the ratio of lateral force to vertical force (''L/V ratio'') on any wheel not exceed, for a duration of more than 5 feet, the ratio given by Nadal's limit with a COF of 0.5 (*i.e.,* the FRA single-wheel L/V ratio criterion in § 213.333).

In addition, FRA notes that sensitivity studies conducted by the equipment manufacturer and FRA using computer modeling indicate that an uneven wheel-load distribution has a significant influence on the margin of safety against derailment. That is, passenger equipment with a wheel having a static load up to 10-percent below the nominal load can tolerate significantly less track warp even when the equipment meets the APTA equalization standard. Therefore, FRA is recommending that all new passenger equipment and the three categories of existing passenger equipment identified in this notice be evaluated to determine whether the suspension systems control static wheel-load distribution when the equipment is stationary on perfectly level track such that the lightest wheel load deviates by no more than 5 percent from the nominal wheel load.

Furthermore, while the subject derailments were primarily related to trackworthiness issues, in several other recent low-speed derailments, FRA has determined that broken primary springs were a contributing factor. Although it appears that high coil-to-coil contact stresses within the end coils were a large contributing factor to the broken suspension springs in these derailments, FRA is also aware that spring failures are likely to occur when the fatigue life of suspension springs and their corresponding maintenance intervals are inadequately determined.

Additionally, FRA understands that softer springs, which may be selected to provide better wheel-load equalization (and correspondingly decrease the likelihood of the subject low-speed derailments), may be more prone to failure and consequently may need more frequent maintenance than the stiffer springs. In order to ensure that springs are capable of withstanding both the static and dynamic loads imposed in service under all passenger loading conditions from empty (AW0) to full capacity (AW3), FRA is recommending that the fatigue life of suspension springs and their corresponding maintenance intervals be determined using a fatigue-evaluation load equal to the full-capacity loading conditions. As is the case with the other recommendations in this notice, FRA has limited the applicability of this recommendation, namely by applying it to all new passenger equipment designed with suspension springs, and existing passenger equipment with such springs when the springs are redesigned.

FRA believes that addressing the above interrelated issues through the recommended measures will reduce the risk of wheel-climb derailments over more-demanding track geometry conditions found in low-speed operating environments. In addition, FRA anticipates that implementation of the recommendations through redesign will promote interoperability of passenger equipment throughout the U.S rail network and help avoid the need for equipment-specific track geometry limits or operational restrictions, or both.

Recommended Action: In light of the observed passenger equipment design trends and recent incidents, FRA recommends that railroads and other industry members take the following actions:

1. Evaluate the trackworthiness of the following equipment types intended for use in the United States:

- All new passenger equipment types.
- Any existing passenger equipment type that is undergoing a redesign of its suspension system that will likely affect the low-speed trackworthiness performance of the vehicle.
- Any existing passenger equipment type that is being placed in service over a new route that the railroad knows to have more-demanding track geometry conditions (*e.g.,* curvature, warp, etc.).
- Any existing passenger equipment type that has experienced one or more low-speed, wheel-climb derailments that may have had a combination of wheel unloading and track warp of 3 inches or less as a contributing factor.

Such evaluation should take into account the full range of component tolerances and maintenance limits, and determine whether—

a. Suspension systems meet the APTA truck equalization standard, APTA SS–M–014–06, Standard for Wheel Load Equalization of Passenger Railroad Rolling Stock (2007), under both the AW0 and AW3 loading conditions.

b. Suspension systems prevent wheel climb while negotiating, at a minimum, a 12-degree curve with a COF representative of dry track conditions (*i.e.,* 0.5) and 3-inch track warp variations with the following wavelengths: 10, 20, 40, and 62 feet. Under both the AW0 and AW3 loading conditions, the L/V ratio on any wheel should not exceed, for a duration of more than 5 feet, the ratio given by Nadal's limit with a COF of 0.5 (*i.e.,* the FRA single-wheel L/V ratio criterion in § 213.333).

c. Suspension systems control static wheel-load distribution when the equipment is stationary on perfectly level track such that the lightest wheel load deviates by no more than 5 percent from the nominal wheel load.

2. If the results of the trackworthiness evaluation conducted in accordance with recommendation 1 of this notice indicate that the passenger equipment does not meet one or more of the conditions specified in that

[5] *See* § 213.63, prescribing limits for the difference in crosslevel between any two points (measured along the rails of the track) less than 62 feet apart. For FRA Class 1 track, the difference in crosslevel may not be more than 3 inches.

[6] Nothing in this safety advisory is intended to place responsibility for these incidents on the acts or omissions of any person or entity.

[7] These multi-level vehicles were placed in service between 2006 and 2008, and were designed to provide stable operation at speeds up to 125 mph and meet clearance requirements.

recommendation, or if a railroad otherwise has knowledge that the equipment does not meet one or more of these conditions, take appropriate action to address the equipment's derailment tendency as follows:

a. For new equipment or equipment undergoing a redesign of its suspension system that will likely affect the low-speed trackworthiness performance of the vehicle, as applicable, redesign the suspension system so that it meets truck-equalization industry standards, prevents wheel climb, and controls static wheel-load distribution under the conditions and within the limits specified in recommendation 1 of this notice.

b. For existing equipment that is being placed in service over a new route that the railroad knows to have more-demanding track geometry conditions, or that has experienced one or more low-speed, wheel-climb derailments, as described in this notice, redesign the suspension system as described in recommendation 2a of this notice, or take other appropriate action to mitigate the derailment tendency, such as by ensuring that the track over which the equipment is operating is maintained to standards appropriate for the specific equipment type, or by placing operational restrictions on the equipment, or both.

3. For all new passenger equipment types designed with suspension springs, and for existing passenger equipment types with such springs when the springs are redesigned, ensure that the fatigue life of the springs and their corresponding maintenance intervals are determined using the AW3 loading condition.

FRA encourages railroads and other industry members 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 2013–02, 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 March 11, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–06000 Filed 3–13–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Disclosure and Reporting of CRA-Related Agreements

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), 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, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Disclosure and Reporting of CRA-Related Agreements.''

DATES: Comments must be received by May 13, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0219, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Washington, DC 20219.

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) to include 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, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend, without change, OMB approval of the following information collection:

Title: Disclosure and Reporting of CRA-Related Agreements (12 CFR Parts 35 and 133).

OMB Control No.: 1557–0219.

Description: This submission covers an existing regulation and involves no change to the regulation or the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

National banks, Federal savings associations and their affiliates (institutions) occasionally enter into agreements with nongovernmental entities or persons (NGEPs) through their Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act) requires disclosure of certain of these agreements, and imposes reporting requirements on institutions and other insured depository institutions (IDIs), their affiliates, and NGEPs. 12 U.S.C. 1831y. As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve Board issued regulations to implement these disclosure and reporting requirements. The reporting provisions of these regulations constitute collections of information under the PRA. The regulations issued by the OCC

and the former Office of Thrift Supervision are codified at 12 CFR 35 and 133; the collections of information contained in that regulation are known as ''CRA Sunshine.''

Section 48 of the FDI Act applies to written agreements that: (1) Are made in fulfillment of the CRA, (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an IDI or affiliate of an IDI and an NGEP. 12 U.S.C. 1831y(e).

The parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt, and use of funds or other resources under the agreement. The collections of information in CRA Sunshine implement these statutorily mandated disclosure and reporting requirements. The parties to the agreement may request confidential treatment of proprietary and confidential information in an agreement or annual report. 12 CFR 35.8; 12 U.S.C. 1831y(a)–(c).

The information collections are found in 12 CFR 35.4(b); 35.6(b)–(d); 35.7(b) and (f); 133.4(b); 133.6(b)–(d); and 133.7(b) and (f).

Type of Review: Extension of a currently approved collection. *Affected Public:* Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 388. *Estimated Total Annual Burden:* 800.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 7, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–05832 Filed 3–13–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6497

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6497, Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

OMB Number: 1545–0232.

Form Number: Form 6497.

Abstract: Section 605D of the Internal Code requires an information return to be made by any person who administers a Federal, state, or local program providing nontaxable grants or subsidized energy financing. Form 6497 is used for making the information return. The IRS uses the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grants or subsidized financing.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and federal, state, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 3 hours, 14 minutes.

Estimated Total Annual Burden Hours: 810.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05852 Filed 3–13–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5471 (and Related Schedules)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5471 (and related schedules), Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

OMB Number: 1545–0704.

Form Number: 5471 (and related schedules).

Abstract: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of Internal Revenue Code sections 6035, 6038 and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Individuals or households.

Estimated Number of Respondents: 28,380.

Estimated Time per Respondent: 155 hours, 3 minutes.

Estimated Total Annual Burden Hours: 4,280,133.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05853 Filed 3–13–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8703

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8703, Annual Certification of a Residential Rental Project.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Certification of a Residential Rental Project.

OMB Number: 1545–1038.

Form Number: 8703.

Abstract: Form 8703 is used by the operator of a residential rental project to provide annual information that the IRS will use to determine whether a project continues to be a qualified residential rental project under Internal Revenue Code section 142(d). If so, and certain other requirements are met, bonds issued in connection with the project are considered ''exempt facility bonds'' and the interest paid on them is not taxable to the recipient.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 12 hours, 46 minutes.

Estimated Total Annual Burden Hours: 76,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–05851 Filed 3–13–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1128

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1128, Application to Adopt, Change, or Retain a Tax Year.

DATES: Written comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application to Adopt, Change, or Retain a Tax Year.

OMB Number: 1545–0134.

Form Number: 1128.

Abstract: Section 442 of the Internal Revenue Code requires that a change in a taxpayer's annual accounting period be approved by the Secretary. Under regulation section 1.442–1(b), a taxpayer must file Form 1128 to secure prior approval unless the taxpayer can automatically make the change. The IRS uses the information on the form to determine whether the application should be approved.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals, Not-for-profit institutions, and Farms.

Estimated Number of Respondents: 9,788.

Estimated Time per Respondent: 23 hours, 43 minutes.

Estimated Total Annual Burden Hours: 232,066.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2013.

Yvette Lawrence,

IRS Report Clearance Officer.

[FR Doc. 2013–05841 Filed 3–13–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Former Prisoners of War will meet on March 25–27, 2013, in Room 230 at VA Central Office, 810 Vermont Avenue NW, Washington, DC, from 9 a.m. each day and until 4 p.m. on March 25 and 12 noon on March 27. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

The agenda will include overviews of recent outreach efforts, as well as briefings on the current programs of the Veterans Benefits Administration and the Veterans Health Administration on providing care for Veterans who are former prisoners of war. There will also be numerous discussions and workgroups among the Committee members to formulate the next set of recommendations to the Secretary.

No time will be allocated at this meeting for oral presentations from the public. Individuals may submit written statements for the Committee's review to Ms. Pam Burd, Designated Federal Officer, Department of Veterans Affairs (212C), 810 Vermont Avenue NW., Washington, DC 20420, or email to *pamela.burd@va.gov*. Any member of the public seeking additional information should contact Ms. Burd at (202) 461–9149.

Dated: March 8, 2013.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–05867 Filed 3–13–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 78 Thursday,

No. 50 March 14, 2013

Part II

Department of Commerce

Bureau of the Census

15 CFR Part 30

Foreign Trade Regulations: Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration Information; Final Rule; Submission for OMB Review; Comment Request; Notice

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 100318153–3158–02]

RIN 0607–AA50

Foreign Trade Regulations: Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration Information

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) is amending its regulations to reflect new export reporting requirements. Specifically, the Census Bureau is requiring mandatory filing of export information through the Automated Export System (AES) or through AES*Direct* for all shipments of used self-propelled vehicles and temporary exports. In addition to adopting new export reporting requirements and modifying the postdeparture filing program, the Census Bureau is making remedial changes to the FTR to improve clarity and to correct errors.

DATES: This final rule is effective January 8, 2014, except for § 30.6(a)(24) and (b)(15) containing information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the Census Bureau will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nick Orsini, Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233–6010, by phone (301) 763–6959, by fax (301) 763–6638, or by email (nick.orsini@census.gov).

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The AES is the primary instrument used for collecting export trade data, which is used by the Census Bureau for statistical purposes only. Through the AES, the Census Bureau collects Electronic Export Information (EEI), the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration, reported pursuant to Title 15 Code of Federal Regulations (CFR) Part 30. The EEI consists of data elements set forth at 15 CFR 30.6 for an export shipment, and includes information such as the exporter's personal identifying information, which includes name, address and identification number, and detailed information concerning the exported product. Other Federal government agencies use the EEI for export control purposes to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users. The EEI is exempt from public disclosure unless the Secretary of Commerce determines under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g), that such exemption would be contrary to the national interest.

In August 2003, the Census Bureau, in agreement with U.S. Customs and Border Protection (CBP), placed a moratorium on accepting new applications for Postdeparture filing. The Census Bureau and CBP plan to continue the moratorium on accepting new applications pending the development of a program to collect advanced export information that will continue to facilitate trade and address national security concerns. The Census Bureau is modifying the existing postdeparture filing program for current approved filers.

Response to Comments

The Census Bureau received 53 letters and/or emails commenting on the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on January 21, 2011, (76 FR 4002). All the letters and/or emails contained comments on two or more issues. A summary of the comments and the Census Bureau's responses are provided below.

The major concerns were as follows:

1. *Amend the proposed rule to remove the requirement for reporting the Country of Origin.* Several commentors were concerned that they would have to install costly automated systems to calculate and classify all components that go into the exported product, or institute a manual procedure to generate the necessary information. The Census Bureau has removed the requirement to report the country of origin because of the significant cost and burden the trade community would incur as a result of this requirement.

2. *Amend the proposed rule to remove the equipment number as a conditional data element.* Commentors were concerned that the equipment number may not be available at the time of filing and as a result would create a burden to the trade community. The Census Bureau agrees with the commentors; therefore, this information will remain an optional reporting field.

3. *Amend the proposed rule to remove the requirement to report household goods regardless of value and destination.* Commentors were concerned that this requirement would increase burden to the trade by requiring filing for shipments that are exempt based on the low value exemption or the exemption for non-licensed shipments to Canada. Commentors were also concerned that the new definition was too broad. The Census Bureau has reviewed this section and determined that the previous regulations remain appropriate. Filing will be required for household goods that are over $2,500 and are destined for countries other than Canada. In addition, the Census Bureau revised the definition of household goods to add clarity.

4. *Clarify that the changes to the Foreign Trade Regulations will not adversely affect the President's National Export Initiative.* Commentors were concerned that the proposed postdeparture changes would impede the President's National Export Initiative (NEI). The Census Bureau supports the President's National Export Initiative and does not want to impede the export process. We reviewed all comments and after consideration, have excluded several of the proposed requirements to reduce the burden placed on the trade community. The Census Bureau's goal is to continue collecting accurate and timely statistics as well as address the enforcement and security concerns of CBP, the Bureau of Industry and Security (BIS), and the U.S. Department of State. The Census Bureau has determined that these goals complement the President's National Export Initiative.

5. *Clarify that an Automated Export System (AES) filing is required for repairs and replacements when valued over $2,500 per Schedule B number, or when a license or Department of Defense Trade Controls (DDTC) exemption is required.* The commentors requested clarification on whether an AES filing was required regardless of value for repairs and replacements. The requirement for filing an EEI record for repairs and replacements has not changed. The Census Bureau added ''If the value of parts and labor is over $2,500 per Schedule B, or a license or DDTC license exemption statement is required, the EEI must be filed,'' to clarify that the filing is only required when the value of repairs and replacement parts is over $2,500.

6. *Amend the proposed rule to remove the seal number as a conditional data*

element. Commentors stated that it would be extremely difficult to obtain the seal number prior to exportation. The Census Bureau conferred with trade groups who verified that the seal number may not be available at the time of filing. Therefore, this information will remain an optional reporting field.

7. *Amend the proposed rule to remove the requirement to report the Transportation Reference Number (TRN) for air shipments.* Commentors were concerned that the TRN would not be available since it is not a common practice for air shipments to have an advance booking. The Census Bureau conferred with trade groups who verified that the TRN is not available at the time of filing; therefore, reporting the TRN will remain optional.

8. *Clarify that the reuse of the Shipment Reference Number (SRN) is prohibited.* Commentors were concerned that the trade currently reuses the same SRN for internal purposes and would like the ability to reuse the same SRN for AES purposes. The Census Bureau recognizes that the trade community may continue to use the same SRN for internal purposes. However, an analysis of the AES confirmed that the system is not configured to allow the reuse of the SRN, and the SRN cannot be reused.

9. *Amend the proposed rule to remove the requirement to report the address of the license applicant.* A commentor is concerned that the Census Bureau is requiring information that is available in the licensing database. The Census Bureau acknowledges that this information is collected in the export control licensing system and will remove the requirement to report the address of the license applicant. Therefore, the Census Bureau will eliminate the license applicant in the Final Rule.

10. *Amend a number of definitions in the definition section of the proposed rule.* Several commentors proposed changes to definitions contained in the NPRM. The Census Bureau revised the following definitions in § 30.1:

AES downtime filing citation. The Census Bureau revised this definition to clarify that the downtime citation cannot be used when the filer's system is down or experiences delays.

Annotation. The Census Bureau revised this definition by adding the word ''commercial'' prior to the words ''loading documents.''

Automated Export System Trade Interface Requirements (AESTIR). The Census Bureau revised this definition by adding the word ''technical'' to clarify that the document also includes technical requirements.

Automated Foreign Trade Zone Reporting Program (AFTZRP). The Census Bureau deleted this definition because the program is no longer in existence.

Country of ultimate destination. The Census Bureau revised this definition to include reference to § 30.6(a)(5).

Diplomatic pouch. The Census Bureau added this definition as a result of internal agency review.

Electronic CBP Form 214 Admissions (e214). The Census Bureau added this definition to clarify the electronic submission of Foreign Trade Zone information replaced the AFTZRP.

Export value. This term was changed to ''value'' and moved alphabetically in § 30.1.

Filers. The Census Bureau revised this definition to remove the word ''system'' after the acronym ''AES.''

Filer ID. The Census Bureau added this definition as a result of internal agency review.

Foreign exports. The Census Bureau revised this definition to clarify that goods can also be admitted to a U.S. Foreign Trade Zone.

Foreign port of unlading. The Census Bureau added this definition as a result of internal agency review.

Foreign principal party in interest (FPPI). The Census Bureau revised this definition to clarify that the FPPI is the party that purchases the goods.

Foreign Trade Zone (FTZ). The Census Bureau revised this definition to clarify that goods can also be manufactured in an FTZ.

Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The Census Bureau revised this definition to include the correct title and abbreviation and remove references to CBP since it is not the only agency that uses the HTSUSA.

Household goods. The Census Bureau added this definition as a result of internal agency review.

International Waters. The Census Bureau added this definition as a result of internal agency review.

Issued banknotes. The Census Bureau added this definition as a result of internal agency review.

Kimberley Process Certificate (KPC). The Census Bureau added this definition to account for this document since it is used to certify the origin of rough diamonds from sources which are free of conflict.

Loading document. This term was changed to ''commercial loading document'' and moved accordingly.

Mass-market software. The Census Bureau added this definition as a result of internal agency review.

Method of Transportation. The Census Bureau revised this definition to include shipments via mail as a method of transportation.

Non-Vessel Operating Common Carrier (NVOCC). The Census Bureau added this definition as a result of internal agency review.

Port of export. The Census Bureau revised this definition to clarify what port is required to be reported for transshipments through Canada or Mexico.

Postdeparture filing. The Census Bureau revised this definition to clarify that the postdeparture filing time frame is changed from ten (10) calendar days to five (5).

Power of attorney. The Census Bureau revised this definition to include a reference to Appendix A.

Shipment. The Census Bureau revised this definition to clarify that except as noted in § 30.2(a)(1)(iv), the EEI shall be filed when the value of the goods is over $2,500 per Schedule B number.

Shipment reference number. The Census Bureau revised this definition to clarify that the reuse of the shipment reference number is prohibited.

Shipper's Export Declaration (SED). The Census Bureau revised this definition to clarify the date the paper SED became obsolete.

Shipping documents. The Census Bureau added this definition to clarify what is considered a shipping document for purposes of retaining required documents for five years and reporting proof of filing citations and exemption legends.

Split shipment. The Census Bureau revised this definition to clarify that split shipments apply to all modes of transportation and that all parts of a shipment must leave within 24 hours from the same port.

Transshipment. The Census Bureau added this definition as a result of internal agency review.

U.S. Customs and Border Protection. The Census Bureau revised this definition to correct errors in grammar.

Voluntary Self-Disclosure (VSD). The Census Bureau added this definition as a result of internal agency review.

Written Authorization. The Census Bureau revised this definition to include reference to Appendix A.

11. *Clarify whether an exemption can be used for goods destined to Country Group E:1.* Several commentors requested further clarification as to whether an exemption can be used for these types of shipments. Certain shipments destined to Country Group E:1 are exempt from AES filing per 15 CFR 740 of the Export Administration Regulations (EAR). The Census Bureau has revised § 30.2(a)(1)(iv) to add a note clarifying that the filing requirement for

certain shipments destined to Country Group E:1 are located in § 30.16.

12. *Amend the proposed rule to eliminate the requirement to report the exclusion legend.* Several commentors were concerned that if the exclusion legend is not required to be noted on the bill of lading or other commercial loading documents, carriers would not be able to recognize if the shipment was annotated properly. They were concerned that this new requirement could potentially lead to violations of the Foreign Trade Regulations (FTR) which would ultimately result in penalties for all parties involved. Commentors recommend that the exclusion legend remain a requirement. The Census Bureau and CBP have reviewed this requirement and agree with the commenters that this requirement should not be changed, therefore the previous regulations remain appropriate.

13. *Amend the proposed rule to revise the definition of a split shipment to clarify that split shipments apply to all modes of transportation and that all parts of a shipment must leave within 24 hours from the same port of export.* Several commentors were concerned that the changes to the split shipment requirement would increase the burden on the trade because multiple shipments would have to be filed after the initial shipment is exported. The Census Bureau revised the split shipment definition to remove the burden of having to file for multiple shipments that have been split by the carrier and are departing from the same port within 24 hours of each other. The new definition will reflect that after the first part of the shipment has been exported; all the succeeding parts must be exported within 24 hours. The commentors were also concerned that the carriers would be burdened with notifying USPPIs and filers of the changes to the shipment information. The Census Bureau reviewed this part and found that the requirement to notify the USPPI or filer of changes to the transportation information has not changed from the previous regulations and remains appropriate.

14. *Amend the proposed rule to include a mandatory filing requirement for ultimate consignee type.* Several commentors were concerned with reporting the ultimate consignee type because the ultimate consignee may be a party other than a Reseller, Government Reseller, or Government Consumer. Also, the commentors were concerned that the ultimate consignee type may be unknown at the time of export. The Census Bureau acknowledges that the ultimate consignee type may be unknown or other. Therefore, the Census Bureau modified the requirement to include Other/Unknown as reporting options for the ultimate consignee type. This is a new mandatory filing requirement and has been added as § 30.6(a)(24).

15. *Clarify the carrier responsibilities in an export transaction.* Several commentors requested clarification on how carriers are to determine changes to commodity information as well as identify the party who filed in order to provide them with changes. The Census Bureau understands that the carrier may not know the commodity information. The Census Bureau has reviewed this section and has revised § 30.3(c)(3)(iv) to indicate the carrier is only responsible for providing and notifying the USPPI or Authorized Agent of changes to the transportation data.

16. *Clarify how the carrier is to amend the manifest when the manifest is not required to be filed until four days after the date of export.* Commentors were concerned that when identifying a portion of the goods covered by a single EEI transaction that has not been exported on the intended conveyance that they could not immediately notify the CBP Director and amend the manifest because the carrier files the manifest four days after the export departure date. The Census Bureau has reviewed this section and has revised § 30.3(c)(3)(iv) to indicate that manifest amendments must be made in accordance with CBP regulations.

17. *Clarify that licensed goods where the country of ultimate destination is the United States are outside the scope of the FTR.* Commentors requested clarification on how a carrier would be able to identify that the person(s) or entity assuming control of the item(s) is a citizen or permanent resident alien of the United States or a juridical entity organized under the laws of the United States or a jurisdiction within the United States. The Census Bureau has reviewed these comments and has determined that there are no significant procedural requirements for carriers regarding their responsibility for ensuring that export documentation has the required citations. As noted above, shipments where the country of ultimate destination is the United States are outside the scope of the FTR.

18. *Amend the proposed rule to remove the requirement to report the end user.* Several commentors were concerned that they would have to incur costly programming changes in order to capture the end user information. In addition, commentors were concerned that the information is not always available. The Census Bureau acknowledges that this information is collected in the export control licensing system; therefore, the Census Bureau eliminated the requirement to report the end user in the Final Rule.

19. *Clarify the commodity based requirement for postdeparture reporting.* Several Commenters were concerned about the limited commodities available for postdeparture reporting. The commentors requested additions to the commodities available for the postdeparture privilege. The Census Bureau has reviewed these comments and has agreed with the CBP to revise § 30.5. The proposed commodity based postdeparture program is not going to be implemented. However, the Census Bureau and CBP have agreed to continue the moratorium on accepting new applications for postdeparture filing, pending the development of a program to collect advanced export information that will continue to facilitate trade and address national security concerns. Based on the results, the Census Bureau and CBP will issue new guidelines on the application process for postdeparture filing.

20. *Clarify the requirement to report postdeparture shipments no later than five (5) calendar days from the date of export.* Several commentors were concerned the filing requirement to report the export information in the AES no later than five (5) calendar days from the date of export did not give filers enough time to file the EEI. The Census Bureau reviewed the AES data and found that only a small percentage of approved postdeparture USPPIs reported their EEI after five (5) calendar days. The Census Bureau and the CBP have reviewed this section of the NPRM and determined that the requirement to file the EEI for postdeparture shipments within five (5) days from the date of export remains appropriate.

21. *Clarify that the moratorium on postdeparture applications will be lifted.* Several commentors wanted clarification on the existing moratorium on the postdeparture filing program. The Census Bureau and CBP have agreed to continue the moratorium on accepting new applications for postdeparture filing, pending the development of a program to collect advanced export information that will continue to facilitate trade and address national security concerns.

22. *Clarify in the proposed rule that the filing timeframe for submitting manifests to CBP is within four calendar days of departure.* Commentors requested clarification on the filing timeframe for filing citations, exemptions, and submitting manifests to the CBP. The Census Bureau reviewed

the request and § 30.47 was revised to clarify that all required filing citations and/or exemption legends must be submitted by the carrier at the port of exit in accordance with all applicable requirements under the CBP regulations.

23. *Clarify the filing requirement for used self-propelled vehicles.* Several commentors requested clarification on the requirement to file EEI for used self-propelled vehicles regardless of value and destination. The Census Bureau has reviewed the NPRM regarding this requirement and determined that there will be no exemptions to this requirement. Several commentors were also concerned about the use of the Manufacturer's Statement of Origin Certificates (MSOs) and being able to use this documentation in order to be exempt from filing requirements. The Census Bureau acknowledges this concern and forwarded this comment to the CBP for consideration.

Changes to the Proposed Rule Made by This Final Rule

After consideration of the comments received, the Census Bureau revised certain provisions and added several provisions in the Final Rule to address the concerns of the commentors and to clarify the requirements of the rule. The changes made in this Final Rule are as follows:

- Section 30.1(c) is amended by adding the definition of ''Kimberley Process Certificate (KPC)'' to clarify the use of the term in the FTR.
- Section 30.2(a)(1)(iv) is amended by deleting the revised end user definition as a result of the elimination of the end user requirement; therefore, the current FTR definition remains appropriate.
- Section 30.2(a)(1)(iv) is amended by adding paragraph (E) for shipments licensed by the Nuclear Regulatory Commission (NRC). This change was made to provide clarity that shipments licensed by NRC must be filed via the AES.
- Section 30.2(a)(1)(iv) is amended by adding a clarifying note to (a)(1)(iv) for filing requirements for shipments destined for a country in Country Group E:1 as set forth in the Supplement No. 1 to 15 CFR part 740. This change was made to provide clarity and ensure consistency with the EAR.
- Section 30.4(a)(8) is amended to clarify that all shipments that require a license from the BIS and exports listed under BIS's grounds for denial of postdeparture filing status set forth in 15 CFR § 758.2 must be filed predeparture. This change was made to provide clarity.
- Section 30.4(a) is amended by adding the requirement that shipments licensed by the NRC must be filed predeparture. This change was made to provide clarity and consistency.
- Section 30.4(c) is amended by modifying the filing timeframe for postdeparture shipments from ten calendar days to five calendar days from the date of export. This change is in response to concerns addressed in item 20 in the ''Response to Comments'' section.
- Section 30.5 is amended by modifying the existing postdeparture filing program. However, the moratorium on accepting new applications will remain in effect pending the development of a new postdeparture program.
- Section 30.5 is amended by removing the requirement that postdeparture reporting will only be permitted for commodities on the approved list for postdeparture filing. This change is in response to concerns addressed in item 19 in the ''Response to Comments'' section.
- Section 30.5(c)(3) is amended by adding a section to clarify that the Census Bureau may revoke postdeparture privileges of an approved USPPI if it exports commodities that must be filed predeparture. This change was made during internal agency review.
- Section 30.6(a) is amended by adding a new filing requirement for ultimate consignee type. The ultimate consignee types are: Direct consumer, Government Entity, Other and Unknown. This change is in response to concerns addressed in item 14 in the ''Response to Comments'' section.
- Section 30.6(b)(1) is amended to clarify that an authorized agent should be listed in the AES when they prepare and file the EEI or are named on the export license. This change was made during internal agency review.
- Section 30.6(b)(3) is amended by adding the words ''7-digit alphanumeric identifier.'' This change was made during internal agency review.
- Sections 30.7(c) and 30.50(b) are amended to reflect that the Kimberley Process Certificate must be faxed to the Census Bureau prior to export. This change was made during internal agency review.
- Section 30.9(b) is amended to clarify that failure to respond to fatal error messages for shipments filed will subject the USPPI or authorized agent to penalties. This change was made to provide clarity.
- Section 30.16 is amended by adding paragraph (c) to include the requirement to place certain export information on export control documents for shipments that are exempt from filing in the AES. This change was made during internal agency review.
- Section 30.16 is amended by adding paragraph (d) to include the filing requirements for shipments destined for a country listed in Country Group E:1 as set forth in Supplement No. 1 to 15 CFR part 740. This language is also referenced in the note to § 30.2 (a)(1)(iv). For shipments destined for a country listed in Country Group E:1 the EEI is required regardless of value unless such shipment is eligible for one or more of the exemptions in § 30.37(y) and does not require a license by any other Federal Government Agency. This change was made during internal agency review.
- Section 30.16 is amended by adding paragraph (e) for goods licensed by the BIS where the country of ultimate destination is the United States. This change was made during internal agency review.
- Section 30.26 is amended to clarify filing requirements for shipments of vessels, aircraft, cargo vans, and other carriers and containers. This change was made to provide clarity and consistency.
- Section 30.28 is amended to clarify that split shipments now include all modes of transportation and that all parts of a shipment must leave within 24 hours from the same port. This change is in response to concerns addressed in item 13 in the ''Response to Comments'' section.
- Section 30.29 is amended to clarify the value to be reported for United States Munitions List (USML) and non-USML shipments of goods previously imported for repair, alteration, or replaced under warranty.
- Section 30.37 is amended by removing and reserving paragraphs (e), (q) and (r). This change was made to eliminate costly programming changes.
- Section 30.37 is amended by revising paragraphs (h) to clarify the specific section of the EAR that provides requirements for a license exception for gift parcels and humanitarian donations (GFT). This change was made during internal agency review.
- Section 30.37 is amended by adding paragraphs (u), (v), (w), (x) and (y) to clarify that exports of technical data and defense service items; vessels, aircraft, cargo vans, and other carriers and containers when shipping as instruments of international traffic; shipments via Army Post Office, Diplomatic Post Office and Fleet Post Office shipments, shipments exported under a license exception for baggage (BAG); and certain shipments destined to Country Group E:1 that have been identified by the BIS are exempt from the EEI filing requirements. This change

was made during internal agency review.

• Sections 30.47(a), (a)(1) and (a)(2) are amended to clarify that the carrier must file the manifest and all required filing citations and/or exemption legends in accordance with the CBP regulations. This change is in response to concerns addressed in item 22 in the ''Response to Comments'' section.

Program Requirements

To comply with the requirements of the Foreign Relations Authorization Act, Public Law 107–228, the Census Bureau is amending relevant sections of the FTR to correct or clarify export reporting requirements.

The Census Bureau amended the following sections of the FTR:

• Revise the table of contents entry for § 30.28 by removing the quotations and the words ''by air'' because split shipments applies to all modes of transportation.

• Revise § 30.1(c) to add the terms and definitions for ''Commercial loading document,'' ''Diplomatic pouch,'' ''Electronic CBP Form 214 Admissions (e214),'' ''Filer ID,'' ''Foreign port of unlading,'' ''Household goods,'' ''International waters,'' ''Issued banknote,'' ''Mass-market software,'' ''Non Vessel Operating Common Carrier (NVOCC),'' ''Shipping documents,'' ''Transshipment,'' ''Value,'' and ''Voluntary Self-Disclosure'' to clarify the use of these terms in the FTR.

• In § 30.1(c), revise the definition for ''AES downtime filing citation'' to clarify that the downtime citation cannot be used when the filer's system is down or experiences delays.

• In § 30.1(c), revise the definition for ''Annotation'' by adding the word ''commercial'' prior to the words ''loading documents.'' This revision is necessary to note that the FTR only references commercial loading documents; therefore, the word ''commercial'' is added before all references to the words ''loading documents.''

• In § 30.1(c), revise the definition for ''Automated Export System Trade Interface Requirements (AESTIR)'' to clarify that the document also includes technical requirements.

• In § 30.1(c), remove the definition for ''Automated Foreign Trade Zone Reporting Program (AFTZRP)'' because the program is no longer in existence. The definition for ''Electronic CBP Form 214 Admissions (e214)'' is added to replace the AFTZRP.

• In § 30.1(c), add the term and definition ''Commercial loading document'' because the FTR only references commercial loading documents. Therefore, the term and definition for ''Loading document'' is removed from this section.

• In § 30.1(c), revise the definition for ''Country of ultimate destination'' to reference § 30.6(a)(5).

• In § 30.1(c), remove the term and definition ''Export value'' because this term is not used in the FTR and cite the term and definition ''Value''.

• In § 30.1(c), revise the definition for ''Filers'' to remove the word ''system'' after the acronym ''AES.''

• In § 30.1(c), add the definition for ''Filer ID'' to clarify how the FTR uses the term.

• In § 30.1(c), revise the definition for ''Foreign exports'' to clarify that goods are admitted, rather than entered, to a U.S. FTZ.

• In § 30.1(c), revise the definition for ''Foreign principal party in interest (FPPI)'' to clarify that the FPPI is the party that purchases the goods for export or to whom final delivery will be made or is end-user of the goods.

• In § 30.1(c), revise the definition for ''Foreign Trade Zone (FTZ)'' to clarify that goods can also be manufactured in a FTZ.

• In § 30.1(c), amend the proposed rule to include the definition of ''Kimberley Process Certificate (KPC)'' for clarity.

• In § 30.1(c), revise the term and definition for ''Harmonized Tariff Schedule of the United States Annotated (HTSUSA)'' to include the correct title and abbreviation and remove references to CBP since it is not the only agency that uses the HTSUSA.

• In § 30.1(c), revise the definition for ''Method of Transportation'' to include mail as a method of transportation.

• In § 30.1(c), revise the definition for ''Port of export'' to clarify the port for transshipments through Canada or Mexico.

• In § 30.1(c), revise the definition for ''Postdeparture filing'' to clarify that the postdeparture filing time frame is changed from ten (10) calendar days to five (5) calendar days for export control and enforcement purposes.

• In § 30.1(c), revise the definition for ''Power of attorney'' to include a reference to Appendix A.

• In § 30.1(c), revise the definition for ''Shipment'' to clarify that the EEI shall be filed when the value of the goods is over $2,500 per Schedule B number, except as noted in § 30.2(a)(1)(iv).

• In § 30.1(c), revise the definition for ''Shipment reference number'' to clarify that the reuse of the shipment reference number is prohibited.

• In § 30.1(c), revise the definition for ''Shipper's Export Declaration (SED)'' to clarify the date the paper SED became obsolete.

• In § 30.1(c), revise the definition for ''Split shipment'' to clarify that split shipments apply to all modes of transportation and that the goods must leave from the same port within 24 hours.

• In § 30.1(c), revise the definition for ''U.S. Customs and Border Protection'' to correct errors in grammar.

• In § 30.1(c), revise the definition for ''Written Authorization'' to include reference to Appendix A.

• In § 30.2(a)(1)(iv), redesignate paragraph (E) as a note in this section and add new paragraph (E) to include the filing requirements for shipments licensed by the NRC.

• In § 30.2(a)(1)(iv), add paragraph (H) to include the new filing requirements for reporting used self-propelled vehicles. These shipments will be required to be filed in accordance with CBP regulations.

• In § 30.2(a)(1)(iv), add a note to reference § 30.16 for filing requirements for shipments destined for a country in Country Group E:1 as set forth in the Supplement No. 1 to 15 CFR part 740.

• Revise § 30.2(a)(2), to reflect the correct Web site for the AESTIR document.

• Revise § 30.2(b)(3) to reflect that the AES downtime procedures cannot be used when the computer system of an AES participant is unavailable for transmission.

• Revise § 30.2(d)(2) to clarify that Puerto Rico and the U.S. Virgin Islands are not excluded from filing the EEI.

• Revise the parenthetical phrase in § 30.2(d)(4), by removing the word ''by'' and adding in its place the word ''to.''

• In § 30.2(d), add a new paragraph (5) to include the new exclusion for goods licensed by a U.S. federal government agency where the country of ultimate destination is the United States or goods destined to international waters where the person(s) or entity assuming control of the item(s) is a citizen or permanent resident alien of the United States or a juridical entity organized under the laws of the United States or a jurisdiction within the United States.

• Revise § 30.3(b)(2) to clarify that a foreign entity must be in the United States at the time goods are purchased or obtained for export in order to be listed as a USPPI.

• Revise § 30.3(b)(2)(iii) by removing the word ''foreign entity'' and adding in its place the word ''FPPI.'' This revision was done to differentiate between the use of the term foreign entity versus FPPI.

• In § 30.3(b), add paragraph (4) to include carriers as a party to the export transaction.

• Revise § 30.3(c)(2)(ii) to clarify that the power of attorney or written authorization comes from the USPPI in a standard transaction.

• In § 30.3(c), add paragraph (3) to clarify carrier responsibilities as they pertain to the FTR.

• Revise § 30.4(a)(6) to clarify that shipments where complete outbound manifests are required prior to clearing vessels going directly to the countries identified in CBP regulations 19 CFR 4.75(c) and aircraft going directly or indirectly to those countries per CBP regulations 19 CFR 122.74(b)(2) must be filed predeparture.

• Revise § 30.4(a)(8) to clarify that all shipments that require a license from the BIS or include commodities identified on the Commerce Control List that are not EAR99 must be filed predeparture.

• In § 30.4(a), redesignate paragraphs (9) and (10) as (10) and (11) and add new paragraph (9) to include the requirement that shipments licensed by the NRC must be filed predeparture.

• Revise § 30.4(b)(1) to provide the correct citation in the International Traffic in Arms Regulations for filing timeframes for United States Munitions List (USML) shipments.

• Revise § 30.4(b)(2) to clarify that the filing timeframes do not apply to non-USML shipments between United States and Puerto Rico and do not have to adhere to the filing timeframes.

• In § 30.4(b), redesignate paragraph (3) as paragraph (4) and add new paragraph (3) to clarify that the filing timeframes for shipments between the United States and Puerto Rico do not apply. The USPPI must file the export information for shipments between the United States and Puerto Rico and have the proof of filing citation, postdeparture filing citation, or exemption citation by the time the shipment arrives at the port of unloading.

• Revise § 30.4(b) to add paragraph (5) to include the filing timeframe requirements for used self-propelled vehicles as defined in 19 CFR 192.2 of CBP regulations.

• Revise § 30.4(c) and § 30.5(c) to clarify that the postdeparture filing time frame has changed from ten (10) calendar days to five (5) calendar days.

• Revise § 30.5 to clarify that, when a new postdeparture program is established and the moratorium is lifted, the certification and approval requirements will be strengthened to address U.S. national security concerns and interest. All current USPPI's previously approved for postdeparture filing must reapply.

• In § 30.5(c)(1), add paragraph (ix) to include that the USPPI will be denied postdeparture filing status if unable to meet the AES predeparture filing requirements.

• In § 30.5(c)(3), add paragraph (G) to clarify that the Census Bureau may revoke postdeparture privileges of an approved USPPI if it exports commodities that must be filed predeparture. See section 30.4(a) for types of shipments that must be filed predeparture.

• In § 30.5(d)(1) and (d)(2), remove the administrator code option for accessing account features in the AES*Direct.*

• Revise § 30.5(d)(2) to clarify that companies must immediately deactivate the username, in the AES*Direct,* of any employee who leaves the company or is no longer an authorized user.

• Revise § 30.6(a)(1)(ii) to clarify that the USPPI does not need to own/lease the facility where the goods actually begin the journey to the port of export.

• Revise § 30.6(a)(3) to reflect the new definition of ''Ultimate Consignee'' and to clarify that for licensed shipments to international waters, the person designated on the export license must be reported as the ultimate consignee.

• Revise § 30.6(a)(5) to clarify that the country of ultimate destination can be the country where the goods are stored.

• Revise § 30.6(a)(5)(i) to clarify that the country of ultimate destination for BIS license exceptions and non-licensed shipments to international waters is the nationality of the person(s) or entity assuming control of the item(s) subject to the EAR .

• Revise § 30.6(a)(8) to clarify the carrier identification code that must be reported in the AES for vessel shipments.

• In § 30.6(a)(9), revise text to specify that the port of export for shipments by overland transportation is where the goods cross the U.S. border into Canada or Mexico, including transshipments through Canada or Mexico. In addition, language was added to address shipments by vessel and air involving several ports of exportation.

• In § 30.6(a)(9), remove paragraphs (i) and (ii) because the content is included in the text of § 30.6(a)(9).

• In § 30.6(a)(17), revise the introductory text to clarify that the value reported in the AES must be in U.S. dollars.

• Revise § 30.6(a)(19) to clarify that the reuse of the shipment reference number is prohibited.

• Revise § 30.6(a)(23) by adding a comma and the word ''authorization'' after the word ''permit.'' This revision is to clarify that authorizations, such as validated end-users, are to be reported in the license code/license exemption code field.

• In § 30.6(a) add paragraphs (24), and (24)(i) through (24)(iv) to include a new mandatory filing requirement for ultimate consignee type. The ultimate consignee types are: Direct Consumer, Government Entity, Reseller, and Other/Unknown. If more than one type applies to the ultimate consignee, report the type that applies most often.

• In § 30.6(b), redesignate paragraphs (15) and (16) as paragraphs (16) and (17) and add new paragraph (15) to include the new conditional filing requirement for reporting the license value.

• In § 30.6(b)(1), clarify that an authorized agent shall be reported in the AES when the agent prepares and files the EEI or is named on the export license. Therefore, the language from (b)(1)(ii) is removed because it is captured in 30.6(b)(1).

• Revise § 30.6(b)(3) to add the words ''seven-digit alpha numeric identifier.''

• Revise § 30.6(c)(2) to allow the USPPI to report the container number for containerized vessel shipments in the equipment number field.

• Revise § 30.7(c) to specify that the Kimberley Process Certificate must be faxed to the Census Bureau prior to export.

• In § 30.8, remove the citation ''§ 30.4(e)'' and add in its place ''§ 30.7'', which references the requirement to annotate the commercial loading documents with the proof of filing citation and exemption legend, because the incorrect citation was provided. Section 30.7 provides requirements for annotating the bill of lading, air waybill, or other commercial loading documents with the proof of filing citations, and exemption legends.

• In § 30.8(a), remove the citation ''§ 30.2'' and add in its place ''§ 30.4(b)'' because the incorrect citation is provided in the current FTR.

• In § 30.8(b), add language to reference § 30.46 which states the requirements for filing export information by pipeline carriers.

• Revise § 30.9(b) to clarify that failure to respond to fatal error messages for shipments filed subject the USPPI or authorized agent to penalties. In addition, change the postdeparture filing time frame from ten (10) calendar days to five (5) calendar days, and replace the word ''regulation'' with ''the FTR'' in the second to last sentence.

• In § 30.16, revise the introductory text to spell out the acronym ''EAR'' and remove the word ''also.''

• In § 30.16, revise paragraph (b) to include reference to 15 CFR 758.1(g).

• In § 30.16, add paragraph (c) to include the requirement for placing certain information on export control documents for shipments that are exempt from filing in the AES.

• In § 30.16, add paragraph (d) for Country Group E:1 filing requirements. A shipment destined for a country listed in Country Group E:1 as set forth in Supplement No. 1 to 15 CFR part 740 shall require EEI filings regardless of value unless such shipment is eligible for one of more of the exemptions in § 30.37(y) and does not require a license by any other Federal Government Agency.

• In § 30.16, add paragraph (e) for goods licensed by BIS where the country of ultimate destination is the United States.

• Revise § 30.18(a) to spell out the acronym ''ITAR'' and to clarify that shipments licensed by the State Department that are ultimately destined to a location in the United States are not required to be filed in the AES.

• In § 30.25, add paragraph (c) to include the new filing requirements for goods rejected after entry into the United States. Those goods must be filed in the AES and the value to be reported is the declared import value.

• Redesignate § 30.26(a) as new paragraph § 30.37(v) to include the exemption for reporting vessels, aircraft, cargo vans, and other carriers and containers when shipping as instruments of international traffic.

• Redesignate and revise § 30.26(b) as § 30.26.

• In § 30.28, revise the title to remove the quotation marks and the words ''by air.'' This section clarifies that split shipments now include all modes of transportation and that all parts of a shipment's goods must leave within 24 hours from the same port without requiring a new EEI filing or a revision to the originally filed EEI.

• In § 30.28, revise the introductory text to remove the words ''by air,'' and the word ''aircraft'' and adding in place of the latter the word ''conveyance,'' and to clarify that all parts of a split shipment must leave from the same port within 24 hours.

• In § 30.28(a) and (b), remove all references to the word ''flight'' and add in its place ''conveyance.'' This revision is to clarify that split shipments apply to all modes of transportation.

• Revise § 30.29 to clarify the value to be reported for USML and non-USML shipments of goods previously imported for repair, alteration, or replaced under warranty.

• Revise § 30.35 to clarify that exemptions from filing in the AES do not apply when a shipment falls under § 30.2(a)(1)(iv), which references the types of export shipments that must be filed, regardless of value.

• In § 30.36(b), add paragraph (7) to include the requirement for reporting all used self-propelled vehicles.

• In § 30.36(b), revise the introductory text to clarify that shipments destined to Canada must be filed in the same manner as all other exports when they fall under §§ 30.36(b)(1) through (7) and remove this language from paragraph (b)(2).

• Revise § 30.37 introductory text to clarify that exemptions from filing EEI do not apply if the shipment falls under § 30.2(a)(1)(iv), which references the types of export shipments that must be filed, regardless of value.

• In § 30.37, remove and reserve paragraph (e). This revision removes goods that are transported In-bond through the United States from the list of exemptions. These shipments are outside the scope of the FTR and are excluded from filing requirements. This exclusion is located in § 30.2(d)(1).

• In § 30.37, remove and reserve paragraphs (q) and (r). This revision removes the exemption for temporary exports or for goods that were temporarily imported. Temporary shipments of goods valued over $2,500 per Schedule B or that require a license must be filed in the AES. When reporting temporary exports, report the appropriate export information code for temporary goods, such as ''TE and TP''.

• Revise § 30.37(a) by removing the words ''Except as noted in § 30.2 (a)(1)(iv)'' and clarify that goods that are of domestic and foreign origins with the same Schedule B number must be reported separately. In addition the reference to § 30.38 for the reporting of household goods was added.

• Revise § 30.37(g) to clarify the types of articles that are exempt when shipping to foreign libraries, government establishments, and other similar institutions.

• Revise § 30.37(h) to clarify the specific section of the EAR for license exception GFT.

• Revise § 30.37 by adding paragraphs (u), (v), (w), (x) and (y) to clarify that exports of technical data and defense service exemptions; vessels, aircraft, cargo vans, and other carriers and containers when shipping as tools of international trade; Army Post Office, Diplomatic Post Office and Fleet Post Office shipments; shipments exported under license exception Baggage (BAG) and certain shipments destined to Country Group E:1, are exempt from the EEI filing requirements.

• Revise § 30.38 to reflect the revised definition of household goods.

• In § 30.39 and § 30.40, revise the introductory text to clarify that the exemptions for the U.S. Armed Services and U.S. government agencies and employees do not apply if the shipment falls under § 30.2(a)(1)(iv), which identifies the types of export shipments that must be filed, regardless of value.

• In § 30.40, remove paragraph (d) because § 30.37(g) now incorporates the exemption described in this paragraph.

• In § 30.45(a), revise the introductory text by removing the word ''shall'' from the first sentence and adding in its place the word ''may.''

• In § 30.45(a)(2), remove the word ''unladed'' and adding in its place ''unladen.'' This section is also revised to require the manifest to be filed with the CBP Port Director at the port of exit rather than the port where the goods are laden, except for shipments from the United States to Puerto Rico.

• In § 30.45(c), revise the title to remove the quotation marks and the words ''by air'' since this requirement now pertains to all modes of transportation. This section is also revised to clarify that a split shipment must be divided by the carrier.

• In § 30.45(d), remove the words ''bill of lading'' in the last sentence and add in its place the words ''commercial loading document.''

• Revise § 30.45(f)(1) by adding the words ''Except as noted in § 30.4 (b)(2)'' to clarify that proof of filing citations and exemption legends are required for shipments between the United States and Puerto Rico when the carrier reaches the port of unlading.

• In § 30.45(f), remove paragraphs (3) and (4) because requirements for truck and rail shipments will be added to §§ 30.45(f)(1) and (2).

• In § 30.47, revise paragraphs (a), (a)(1) and (a)(2) to clarify that the carrier must file the manifest and all required filing citations and/or exemption legends in accordance with the CBP regulations.

• Revise § 30.47(a)(3) to clarify that a list of filing citations and/or exemption legends must be presented for carriers under bond on an incomplete manifest upon request by CBP.

• In § 30.50(b)(5), remove the words ''Automated Foreign Trade Zone Reporting Program (AFTZRP)'' and add in their place ''Electronic CBP Form 214 Admissions (e214)'' since the AFTZRP was eliminated March 1, 2009.

• Revise § 30.52 to clarify the statistical filing requirements for Foreign Trade Zone shipments via the e214 or paper 214A.

• In § 30.54(b), remove the word ''region'' in the last sentence and add in its place the word ''country.'' This is to

clarify that the region of origin code replaces the country of origin code on the CBP Form 7501.

• In § 30.71(b), revise paragraph (1), redesignate paragraphs (2) and (3) as paragraphs (3) and (4) and add a new paragraph (2). This revision is to clarify that the civil penalties imposed for late filings and failures to file are different. For late filings, the penalty will not exceed $1,100 per day of delinquency, and no more than $10,000 per violation; whereas, failure to file, the penalty will not exceed $10,000 per violation.

• In § 30.74(c)(3), add paragraphs (vi) and (vii) to clarify that, when submitting a voluntary self-disclosure, the person must indicate the corrective measures taken to avoid the violation in the future and the ITNs of the missed and/or corrected shipments.

• Revise § 30.74(c)(5) to include the U.S. Census Bureau's Foreign Trade Division Web site regarding further instructions for submitting Voluntary self-disclosure (VSD) to the Census Bureau.

• Revise Appendices B through F to reflect all proposed changes to the FTR discussed in this part.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. This rule contains a collection-of-information subject to the requirements of the PRA (44 U.S.C. 3501 et seq.) and a 30-day notice has been submitted to the OMB under control number 0607–0152 for approval to continue to collect export information via the AES and to collect two additional data elements, ultimate consignee type and license value. The estimated burden hours for filing the SED information through the AES and related documents (e.g., the AES Participant Application (APA) and AESDirect) are 791,600.

List of Subjects in 15 CFR Part 30

Economic statistics, exports, foreign trade, reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Census Bureau is amending Title 15, CFR part 30, as follows:

PART 30—FOREIGN TRADE REGULATIONS

Subpart A— General Requirements

■ 1–2. The authority citation for part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan 5 of 1990 (3 CFR 1949–1953 Comp., p.1004); Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended; and Public Law 107–228, 116 Stat.1350.

■ 3. Amend § 30.1(c) by:

■ a. Revising the terms and definitions for ''AES downtime filing citation,'' ''Annotation,'' ''Automated Export System Trade Interface Requirements (AESTIR),'' ''Country of ultimate destination,'' ''Filers,'' ''Foreign Export,'' ''Foreign principal party in interest (FPPI),'' ''Foreign Trade Zone,'' ''Harmonized Tariff Schedule of the United States Annotated (HTSUSA),'' ''Method of transportation,'' ''Port of export,'' ''Postdeparture filing,'' ''Power of attorney,'' ''Shipment,'' ''Shipment reference number,'' ''Shipper's Export Declaration (SED),'' ''Split shipment,'' ''U.S. Customs and Border Protection (CBP),'' and ''Written Authorization;'' and removing the definition for ''Automated Foreign Trade Zone Reporting Program (AFTZRP),'' ''Loading Document,'' ''Export Value''; and

■ b. Adding alphabetically the definitions for ''Commercial loading document,'' ''Diplomatic pouch,'' ''Electronic CBP Form 214 Admissions (e214),'' ''Filer ID,'' ''Foreign port of unlading,'' ''Household goods,'' ''International waters,'' ''Issued banknote,'' ''Mass-market software,'' ''Non Vessel Operating Common Carrier (NVOCC),'' ''Shipping documents,'' ''Transshipment,'' ''Value,'' and ''Voluntary Self-Disclosure (VSD)''.

The revisions and additions read as follows:

§ 30.1 Purpose and definitions.

* * * * *

(c) * * *

AES downtime filing citation. A statement used in place of a proof of filing citation when the AES or AES *Direct* computer systems experience a major failure. The citation must appear on the bill of lading, air waybill, export shipping instructions, or other commercial loading documents. The downtime filing citation is not to be used when the filer's system is down or experiencing delays.

* * * * *

Annotation. An explanatory note (e.g., proof of filing citation, postdeparture filing citation, AES downtime filing citation, exemption or exclusion legend) placed on the bill of lading, air waybill, export shipping instructions, or other commercial loading documents.

* * * * *

Automated Export System Trade Interface Requirements (AESTIR). The document that describes the technical and operational requirements of the AES. The AESTIR presents record formats and other reference information used in the AES.

* * * * *

Commercial loading document. A document that establishes the terms of a contract between a shipper and a transportation company under which freight is to be moved between points for a specific charge. It is usually prepared by the shipper or the shipper's agent or the carrier and serves as a contract of carriage. Examples of commercial loading documents include the air waybill, ocean bill of lading, truck bill and rail bill of lading.

* * * * *

Country of ultimate destination. The country where the goods are to be consumed, further processed, stored, or manufactured, as known to the USPPI at the time of export. (See § 30.6(a)(5).

* * * * *

Diplomatic pouch. Any properly identified and sealed pouch, package, envelope, bag, or other container that is used to transport official correspondence, documents, and articles intended for official use, between embassies, legations, or consulates, and the foreign office of any government.

* * * * *

Electronic CBP Form 214 Admissions (e214). An automated CBP mechanism that allows importers, brokers, and zone operators to report FTZ admission information electronically via the CBP's Automated Broker Interface. The e214 is the electronic mechanism that replaced the Census Bureau's Automated Foreign Trade Zone Reporting Program (AFTZRP).

* * * * *

Filers. Those USPPIs or authorized agents (of either the USPPI or the FPPI) who have been approved to file EEI directly in the AES or AES*Direct* Internet application.

Filer ID. The Employer Identification Number or Dun & Bradstreet Number of the company or individual filing the export information in the Automated Export System.

* * * * *

Foreign exports. Commodities of foreign origin that have previously been admitted to a U.S. FTZ or entered the United States for consumption, including entry into a CBP bonded warehouse, and which, at the time of exportation, are in substantially the same condition as when imported.

Foreign port of unlading. The port in a foreign country where the goods are removed from the exporting carrier. The foreign port does not have to be located in the country of destination. The foreign port of unlading shall be reported in terms of the Schedule K, ''Classification of CBP Foreign Ports by Geographic Trade Area and Country.''

Foreign Principal Party in Interest (FPPI). The party abroad who purchases the goods for export or to whom final delivery or end-use of the goods will be made. This party may be the Ultimate Consignee.

Foreign Trade Zone (FTZ). Specially licensed commercial and industrial areas in or near ports of entry where foreign and domestic goods, including raw materials, components, and finished goods, may be brought in without being subject to payment of customs duties. Goods brought into these zones may be stored, sold, exhibited, repacked, assembled, sorted, graded, cleaned, manufactured, or otherwise manipulated prior to reexport or entry into the country's customs territory.

* * * * *

Harmonized Tariff Schedule of the United States Annotated (HTSUSA). An organized listing of goods and their duty rates, developed by the U.S. International Trade Commission, as the basis for classifying imported products.

Household goods. Usual and reasonable kinds and quantities of personal property necessary and appropriate for use by the USPPI in the USPPI's dwelling in a foreign country that are shipped under a bill of lading or an air waybill and are not intended for sale.

* * * * *

International waters. Waters located outside the U.S. territorial sea, which extends 12 nautical miles measured from the baselines of the United States, and outside the territory of any foreign country, including the territorial waters thereof. Note that vessels, platforms, buoys, undersea systems, and other similar structures that are located in international waters, but are attached permanently or temporarily to a country's continental shelf, are considered to be within the territory of that country.

* * * * *

Issued banknote. A promissory note intended to circulate as money, usually printed on paper or plastic, issued by a bank with a specific denomination, payable to an individual, entity or the bearer.

* * * * *

Kimberley Process Certificate (KPC). The document used to certify the origin of rough diamonds from sources which are free of conflict.

* * * * *

Mass-market software. Software that is produced in large numbers and made available to the public. It does not include software that is customized for a specific user.

* * * * *

Method of transportation. The method by which goods are exported from the United States by way of seaports, airports, or land border crossing points. Methods of transportation include vessel, air, truck, rail, mail or other. Method of transportation is synonymous with mode of transportation.

* * * * *

Non-Vessel Operating Common Carrier (NVOCC). A freight forwarder that acts as common carrier but does not operate the vessels by which ocean transportation is provided, and is a shipper in relation to the involved ocean common carrier.

* * * * *

Port of export. The port of export is the U.S. Customs and Border Protection (CBP) seaport or airport where the goods are loaded on the aircraft or vessel that is taking the goods out of the United States, or the CBP port where exports by overland transportation cross the U.S. border into Canada or Mexico. For EEI reporting purposes only, for goods loaded aboard an aircraft or vessel that stops at several ports before clearing to the foreign country, the port of export is the first CBP port where the goods were loaded. For goods off-loaded from the original conveyance to another conveyance (even if the aircraft or vessel belongs to the same carrier) at any of the ports, the port where the goods were loaded on the last conveyance before going foreign is the port of export. The port of export is reported in terms of Schedule D, ''Classification of CBP Districts and Ports.'' Use port code 8000 for shipments by mail.

* * * * *

Postdeparture filing. The privilege granted to approved USPPIs for their EEI to be filed up to five (5) calendar days after the date of export.

* * * * *

Power of attorney. A legal authorization, in writing, from a USPPI or FPPI stating that an agent has authority to act as the principal party's true and lawful agent for purposes of preparing and filing the EEI in accordance with the laws and regulations of the United States. (See Appendix A of this part.)

* * * * *

Shipment. All goods being sent from one USPPI to one consignee located in a single country of destination on a single conveyance and on the same day. Except as noted in § 30.2(a)(1)(iv), the EEI shall be filed when the value of the goods is over $2,500 per Schedule B or HTSUSA commodity classification code.

Shipment reference number. A unique identification number assigned to the shipment by the filer for reference purposes. The reuse of the shipment reference number is prohibited.

Shipper's Export Declaration (SED). The Department of Commerce paper form used under the Foreign Trade Statistics Regulations to collect information from an entity exporting from the United States. This form was used for compiling the official U.S. export statistics for the United States and for export control purposes. The SED became obsolete on October 1, 2008, with the implementation of the Foreign Trade Regulations (FTR) and has been superseded by the EEI filed in the AES or through the AES*Direct.*

Shipping documents. Documents that include but are not limited to commercial invoices, export shipping instructions, packing lists, bill of ladings and air waybills.

* * * * *

Split shipment. A shipment booked for export that is divided by the carrier in two or more shipments by the same

mode of transportation from the same port within 24 hours.

* * * * *

Transshipment. The transfer of merchandise from the country or countries of origin through an intermediary country or countries to the country of ultimate destination.

* * * * *

U.S. Customs and Border Protection (CBP). The border agency within the Department of Homeland Security (DHS) charged with the management, control, and protection of our Nation's borders at and between the official ports of entry of the United States.

* * * * *

Value. The selling price (or the cost if the goods are not sold) in U.S. dollars, plus inland or domestic freight, insurance, and other charges to the U.S. seaport, airport, or land border port of export. Cost of goods is the sum of expenses incurred in the USPPI's acquisition or production of the goods. (See § 30.6(a)(17)).

* * * * *

Voluntary Self-Disclosure (VSD). A narrative account with supporting documentation that sufficiently describes suspected violations of the FTR. A VSD reflects due diligence in detecting, and correcting potential violation(s) when required information was not reported or when incorrect information was provided that violates the FTR.

* * * * *

Written authorization. An authorization, in writing, by the USPPI or FPPI stating that the agent has authority to act as the USPPI's or FPPI's true and lawful agent for purposes of preparing and filing the EEI in accordance with the laws and regulations of the United States. (See Appendix A of this part.)

■ 4. Amend § 30.2 as follows:
■ a. Revise paragraph (a)(1)(iv)(E);
■ b. Add paragraph (a)(1)(iv)(H);
■ c. Add a note to (a)(1)(iv);
■ d. Revise paragraphs (a)(2) and (b)(3);
■ e. Revise paragraph (d) introductory text, (d)(2), and (d)(4); and
■ f. Add paragraph (d)(5).
The additions and revisions read as follows:

§ 30.2 General requirements for filing Electronic Export Information (EEI).

(a) * * *
(1) * * *
(iv) * * *

(E) Requiring a general or specific export license issued by the U.S. Nuclear Regulatory Commission under 10 CFR part 110.

* * * * *

(H) Used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations, except as noted in CBP regulations.

Note to Paragraph (a)(1)(iv): For the filing requirement for exports destined for a country in Country Group E:1 as set forth in the Supplement No. 1 to 15 CFR part 740, see FTR § 30.16.

(2) *Filing methods.* The USPPI has four means for filing EEI: use AES*Direct;* develop AES software using the AESTIR (see <*www.cbp.gov/xp/cgov/trade/automated/aes/tech_docs/aestir/*>); purchase software developed by certified vendors using the AESTIR; or use an authorized agent. An FPPI can only use an authorized agent in a routed transaction.

(b) * * *

(3) The AES downtime procedures provide uniform instructions for processing export transactions when the government's AES or AES*Direct* is unavailable for transmission. (See § 30.4(b)(1) and § 30.4(b)(3).)

* * * * *

(d) *Exclusions from filing EEI.* The following types of transactions are outside the scope of this part and shall be excluded from EEI filing.

* * * * *

(2) Except Puerto Rico and the U.S. Virgin Islands, goods shipped from the U.S. territories and goods shipped between the United States and these territories do not require EEI filing. However, goods transiting U.S. territories to foreign destinations require EEI filing.

* * * * *

(4) Goods shipped to Guantanamo Bay Naval Base in Cuba from the United States, Puerto Rico, or the U.S. Virgin Islands and from Guantanamo Bay Naval Base to the United States, Puerto Rico, or the U.S. Virgin Islands. (See § 30.39 for filing requirements for shipments exported to the U.S. Armed Services.)

(5) Goods licensed by a U.S. federal government agency where the country of ultimate destination is the United States or goods destined to international waters where the person(s) or entity assuming control of the item(s) is a citizen or permanent resident alien of the United States or a juridical entity organized under the laws of the United States or a jurisdiction within the United States.

* * * * *

■ 5. Amend § 30.3 by revising paragraphs (b)(2) introductory text, (b)(2)(iii), and (c)(2)(ii), and adding paragraphs (b)(4) and (c)(3) to read as follows:

§ 30.3 Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.

* * * * *

(b) * * *

(2) *USPPI.* For purposes of filing EEI, the USPPI is the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the transaction. Generally, that person or entity is the U.S. seller, manufacturer, order party, or foreign entity if in the United States at the time goods are purchased or obtained for export. The foreign entity shall be listed as the USPPI if it is in the United States when the items are purchased or obtained for export. The foreign entity shall then follow the provisions for filing the EEI specified in §§ 30.3 and 30.6 pertaining to the USPPI.

* * * * *

(iii) If a U.S. order party directly arranges for the sale and export of goods to the FPPI, the U.S. order party shall be listed as the USPPI in the EEI.

* * * * *

(4) *Carrier.* A carrier is an individual or legal entity in the business of transporting passengers or goods. Airlines, trucking companies, railroad companies, shipping lines, and pipeline companies are all examples of carriers.

(c) * * *
(2) * * *

(ii) Obtaining a power of attorney or written authorization from the USPPI to file the EEI.

* * * * *

(3) *Carrier responsibilities.* (i) The carrier must not load or move cargo unless the required documentation, from the USPPI or authorized agent, contains the required AES proof of filing, postdeparture, downtime, exclusion or exemption citations. This information must be cited on the first page of the bill of lading, air waybill, or other commercial loading documents.

(ii) The carrier must annotate the AES proof of filing, postdeparture, downtime, exclusion or exemption citations on the carrier's outbound manifest when required.

(iii) The carrier is responsible for presenting the required AES proof of filing, postdeparture, downtime, exclusion or exemption citations to the CBP Port Director at the port of export as stated in Subpart E of this part. Such presentation shall be without material change or amendment of the proof of filing, postdeparture, downtime, exclusion or exemption citation.

(iv) The carrier shall notify the USPPI or the authorized agent of changes to the transportation data, and the USPPI or

the authorized agent shall electronically transmit the corrections, cancellations, or amendments as soon as the corrections are known in accordance with § 30.9. Manifest amendments must be made in accordance with CBP regulations.

(v) Retain documents pertaining to the export shipment as specified in § 30.10.

* * * * *

■ 6. Amend § 30.4 by:
■ a. Revising paragraphs (a)(6) and (8);
■ b. Redesignating paragraphs (a)(9) and (10) as paragraphs (a)(10) and (11);
■ c. Adding new paragraph (a)(9);
■ d. Revising paragraph (b)(1) and paragraph (b)(2) introductory text;
■ e. Redesignating paragraph (b)(3) as (b)(4);
■ f. Adding a new paragraph (b)(3);
■ g. Revising newly redesignated paragraph (b)(4);
■ h. Adding paragraph (b)(5); and
■ i. Revising paragraph (c).
The additions and revisions read as follows:

§ 30.4 Electronic Export Information filing procedures, deadlines, and certification statements.

* * * * *

(a) * * *

(6) Shipments where complete outbound manifests are required prior to clearing vessels going directly to the countries identified in U.S. Customs and Border Protection regulations 19 CFR 4.75(c) and aircraft going directly or indirectly to those countries. (See U.S. Customs and Border Protection regulation 19 CFR 122.74(b)(2));

* * * * *

(8) Shipments that require a license from the BIS and exports listed under BIS's grounds for denial of postdeparture filing status (see 15 CFR 758.2);

(9) Shipments that require a license from the Nuclear Regulatory Commission.

* * * * *

(b) * * *

(1) For USML shipments, refer to the ITAR (22 CFR 123.22(b)(1)) for specific requirements concerning predeparture filing time frames. In addition, if a filer is unable to acquire an ITN because the AES or AES*Direct* is not operating, the filer shall not export until the AES is operating and an ITN is acquired. The downtime filing citation is not to be used when the filer's system is down or experiencing delays.

(2) For non-USML shipments, except shipments between the United States and Puerto Rico, file the EEI and provide the ITN as follows (See § 30.4(b)(3), for filing timeframes for shipments between the United States and Puerto Rico):

* * * * *

(3) For shipments between the United States and Puerto Rico, the AES proof of filing citation, postdeparture filing citation, or exemption citation must be presented to the carrier by the time the shipment arrives at the port of unloading.

(4) For non-USML shipments when the AES or AES*Direct* is unavailable, use the following instructions:

(i) If the participant's AES is unavailable, the filer must delay the export of the goods or find an alternative filing method;

(ii) If AES or AES*Direct* is unavailable, the goods may be exported and the filer must:

(A) Provide the appropriate downtime filing citation as described in § 30.7(b) and Appendix D; and

(B) Report the EEI at the first opportunity AES or AES*Direct* is available.

(5) For used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations, the USPPI or the authorized agent shall file the EEI as required by § 30.6 and provide the filing citation to the CBP at least 72 hours prior to export. The filer must also provide the carrier with the filing citation as required by paragraph (b) of this section.

(c) *EEI transmitted postdeparture.* Postdeparture filing is only available for approved USPPIs and provides for the electronic filing of the data elements required by § 30.6 no later than five (5) calendar days after the date of exportation. For USPPIs approved for postdeparture filing, all shipments (other than those for which predeparture filing is specifically required), by all methods of transportation, may be exported with the filing of EEI made postdeparture. Authorized agents or service centers may transmit information postdeparture on behalf of USPPIs approved for postdeparture filing, or the approved USPPI may transmit the data postdeparture itself.

* * * * *

■ 7. Amend § 30.5 by revising paragraph (c) introductory text, adding paragraphs (c)(1)(ix) and (c)(3)(i)(G), and revising paragraphs (d)(1) and (2) to read as follows:

§ 30.5 Electronic Export Information filing application and certification processes and standards.

* * * * *

(c) *Postdeparture filing approval process.* Postdeparture filing is a privilege granted to approved USPPIs for their EEI to be filed up to five (5) calendar days after the date of export. The USPPI or its authorized agent may not transmit EEI postdeparture for certain types of shipments that are identified in § 30.4(a). The USPPI may apply for postdeparture filing privileges by submitting a postdeparture filing application at *www.census.gov/aes.* An authorized agent may not apply on behalf of a USPPI. The Census Bureau will distribute the applications submitted by USPPI's who are applying for postdeparture to the CBP and the other federal government partnership agencies for their review and approval. Failure to meet the standards of the Census Bureau, CBP or any of the partnership agencies is reason for denial of the AES applicant for postdeparture filing privileges. Each partnership agency will develop its own internal postdeparture filing acceptance standards, and each agency will notify the Census Bureau of the USPPI's success or failure to meet that agency's acceptance standards. Any partnership agency may require additional information from USPPIs that are applying for postdeparture filing. The Census Bureau will notify the USPPI of the decision to either deny or approve its application for postdeparture filing privileges within ninety (90) calendar days of receipt of the postdeparture filing application by the Census Bureau.

(1) * * *

(ix) The USPPI fails to demonstrate the ability to meet the AES predeparture filing requirements.

* * * * *

(3) * * *

(i) * * *

(G) The USPPI or its authorized agent files postdeparture for commodities that are identified in § 30.4(a).

* * * * *

(d) * * *

(1) AES*Direct* user names and passwords are to be kept secure by the account administrator and not disclosed to any unauthorized user or any persons outside the registered company.

(2) Registered companies are responsible for those persons having a user name and password. If an employee with a user name and password leaves the company or otherwise is no longer an authorized user, the company shall immediately deactivate that username in the system to ensure the integrity and confidentiality of Title 13 data.

* * * * *

■ 8. Amend § 30.6 as follows:
■ a. Revise paragraphs (a)(1)(ii), (a)(3), (a)(5) introductory text, (a)(5)(i), (a)(8),

(a)(9), (a)(17) introductory text, (a)(19), and (a)(23);
■ b. Add paragraph (a)(28);
■ c. Revise paragraph (b)(1) introductory text, (b)(1)(ii), and (b)(3);
■ d. Redesignate paragraphs (b)(15) and (16) as (b)(16) and (17), respectively, and revise them;
■ e. Add a new paragraph (b)(15); and
■ f. Revise paragraph (c)(2).
The revisions and additions read as follows:

§ 30.6 Electronic Export Information data elements.

* * * * *

(a) * * *

(1) * * *

(ii) *Address of the USPPI.* In all EEI filings, the USPPI shall report the address or location (no post office box number) from which the goods actually begin the journey to the port of export even if the USPPI does not own/lease the facility. For example, the EEI covering goods laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. For shipments with multiple origins, report the address from which the commodity with the greatest value begins its export journey. If such information is not known, report the address in the state where the commodities are consolidated for export.

* * * * *

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee that is located abroad and actually receives the export shipment. The name and address of the ultimate consignee, whether by sale in the United States or abroad or by consignment, shall be reported in the EEI. The ultimate consignee as known at the time of export shall be reported. For shipments requiring an export license including shipments to international waters, the ultimate consignee reported in the AES shall be the person so designated on the export license or authorized to be the ultimate consignee under the applicable license exemption or exception in conformance with the EAR or ITAR, as applicable. For goods sold en route, report the appropriate ''To be Sold En Route'' indicator in the EEI, and report corrected information as soon as it is known (see § 30.9 for procedures on correcting AES information).

* * * * *

(5) *Country of ultimate destination.* The country of ultimate destination is the country in which goods are to be consumed, further processed, stored, or manufactured, as known to the USPPI at the time of export. The country of ultimate destination is the code issued by the ISO. (i) *Shipments under an export license, license exception or license exemption.* For shipments under an export license or license exemption issued by the Department of State, DDTC or export license or license exception issued by the Department of Commerce, BIS, the country of ultimate destination shall conform to the country of ultimate destination as shown on the license. In the case of a Department of State license, the country of ultimate destination is the country specified with respect to the end user. For goods licensed by other government agencies, refer to their specific requirements concerning providing country of destination information. For shipments to international waters for items that are being exported pursuant to a BIS license exception or No License Required (NLR), the country of destination to be reported is the nationality of the person(s) or entity assuming control of the item(s) subject to the Export Administration Regulations that are being exported.

* * * * *

(8) *Carrier identification.* The carrier identification is the Standard Carrier Alpha Code (SCAC) for vessel, rail, and truck shipments or the International Air Transport Association (IATA) code for air shipments. The carrier identification specifies the carrier that transports the goods out of the United States. The carrier transporting the goods to the port of export and the carrier transporting the goods out of the United States may be different. For vessel shipments, report the carrier identification code of the party whose booking number was reported in the AES. For transshipments through Canada, Mexico, or another foreign country, the carrier identification is that of the carrier that transports the goods out of the United States. For modes other than vessel, air, rail and truck valid methods of transportation, including but not limited to mail, fixed transport (pipeline), and passenger hand carried, the carrier identification is not required. The National Motor Freight Traffic Association (NMFTA) issues and maintains the SCAC. (See *www.nmfta.org.*) The IATA issues and maintains the IATA codes. (See *www.census.gov/trade* for a list of IATA codes.)

(9) *Port of export.* The port of export is the U.S. Customs and Border Protection (CBP) seaport or airport where the goods are loaded on the carrier that is taking the goods out of the United States, or the CBP port where exports by overland transportation cross the U.S. border into Canada or Mexico. For EEI reporting purposes only, for goods loaded aboard a conveyance (aircraft or vessel) that stops at several ports before clearing to the foreign country, the port of export is the first port where the goods were loaded on this conveyance. For goods off-loaded from the original conveyance to another conveyance (even if the aircraft or vessel belongs to the same carrier) at any of the ports, the port where the goods were loaded on the last conveyance before going foreign is the port of export. The port of export shall be reported in terms of Schedule D, ''Classification of CBP Districts and Ports.'' Use port code 8000 for shipments by mail.

* * * * *

(17) *Value.* In general, the value to be reported in the EEI shall be the value of the goods at the U.S. port of export in U.S. dollars. The value shall be the selling price (or the cost, if the goods are not sold), plus inland or domestic freight, insurance, and other charges to the U.S. seaport, airport, or land border port of export. Cost of goods is the sum of expenses incurred in the USPPI's acquisition or production of the goods. Report the value to the nearest dollar, omit cents. Fractions of a dollar less than 50 cents should be ignored, and fractions of 50 cents or more should be rounded up to the next dollar.

* * * * *

(19) *Shipment reference number.* A unique identification number assigned by the filer that allows for the identification of the shipment in the filer's system. The reuse of the shipment reference number is prohibited.

* * * * *

(23) *License code/license exemption code.* The code that identifies the commodity as having a federal government agency requirement for a license, permit, authorization, license exception or exemption or that no license is required.

* * * * *

(28) *Ultimate consignee type.* Provide the business function of the ultimate consignee that most often applies. If more than one type applies to the ultimate consignee, report the type that applies most often. For purposes of this paragraph, the ultimate consignee will be designated as a Direct Consumer, Government Entity, Reseller, or Other/Unknown, defined as follows:

(i) Direct Consumer—a non-government institution, enterprise, or company that will consume or use the exported good as a consumable, for its own internal processes, as an input to

the production of another good or as machinery or equipment that is part of a manufacturing process or a provision of services and will not resell or distribute the good.

(ii) Government Entity—a government-owned or government-controlled agency, institution, enterprise, or company.

(iii) Reseller—a non-government reseller, retailer, wholesaler, distributor, distribution center or trading company.

(iv) Other/Unknown—an entity that is not a Direct Consumer, Government Entity or Reseller, as defined above, or whose ultimate consignee type is not known at the time of export.

(b) * * *

(1) *Authorized agent and authorized agent identification.* The authorized agent is the person or entity in the United States who is authorized by the USPPI or the FPPI to prepare and file the EEI or the person or entity, if any, named on the export license. If an authorized agent is used, the following information shall be provided to the AES:

* * * * *

(ii) *Name of the authorized agent.* Report the name of the authorized agent. (See § 30.3 for details on the specific reporting responsibilities of authorized agents and Subpart B of this part for export control licensing requirements for authorized agents.)

* * * * *

(3) *FTZ identifier.* If goods are removed from a FTZ and not entered for consumption, report the FTZ identifier. This is the unique 7-digit alphanumeric identifier assigned by the Foreign Trade Zone Board that identifies the FTZ, subzone or site from which goods are withdrawn for export.

* * * * *

(15) *License value.* For shipments requiring an export license, report the value designated on the export license that corresponds to the commodity being exported.

(16) *Department of State requirements.* (i) *Directorate of Defense Trade Controls (DDTC) registration number.* The number assigned by the DDTC to persons who are required to register per part 122 of the ITAR (22 CFR parts 120 through 130), and have an authorization (license or exemption) from DDTC to export the article.

(ii) *DDTC Significant Military Equipment (SME) indicator.* A term used to designate articles on the USML (22 CFR part 121) for which special export controls are warranted because of their capacity for substantial military utility or capability. See § 120.7 of the ITAR 22 CFR parts 120 through 130 for a definition of SME and § 121.1 for items designated as SME articles.

(iii) *DDTC eligible party certification indicator.* Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See 22 CFR 120.1(c). This certification is required only when an exemption is claimed.

(iv) *DDTC United States Munitions List (USML) category code.* The USML category of the article being exported (22 CFR part 121).

(v) *DDTC Unit of Measure (UOM).* This unit of measure is the UOM covering the article being shipped as described on the export authorization or declared under an ITAR exemption.

(vi) *DDTC quantity.* This quantity is the number of articles being shipped. The quantity is the total number of units that corresponds to the DDTC UOM code.

(vii) *DDTC exemption number.* The exemption number is the specific citation from the ITAR (22 CFR parts 120 through 130) that exempts the shipment from the requirements for a license or other written authorization from DDTC.

(viii) *DDTC export license line number.* The line number of the State Department export license that corresponds to the article being exported.

(17) *Kimberley Process Certificate (KPC) number.* The unique identifying number on the KPC issued by the United States Kimberley Process Authority that must accompany all export shipments of rough diamonds. Rough diamonds are classified under 6-digit HS subheadings 7102.10, 7102.21, and 7102.31. Enter the KPC number in the license number field excluding the 2-digit ISO country code for the United States.

(c) * * *

(2) *Equipment number.* Report the identification number for the shipping equipment, such as container or igloo number (Unit Load Device (ULD)), truck license number, rail car number, or container number for containerized vessel cargo.

■ 9. Amend § 30.7 by revising paragraph (c) to read as follows:

§ 30.7 Annotating the bill of lading, air waybill, or other commercial loading documents with proof of filing citations, and exemption legends.

* * * * *

(c) Exports of rough diamonds classified under HS subheading 7102.10, 7102.21, 7102.31, in accordance with the Clean Diamond Trade Act, will require the proof of filing citation, as stated in paragraph (b) of this section, and report the proof of filing citation on the KPC. In addition, the KPC must be faxed prior to exportation to the Census Bureau on (800) 457–7328 or provided by other methods as permitted by the Census Bureau.

■ 10. Revise § 30.8 to read as follows:

§ 30.8 Time and place for presenting proof of filing citations and exemption legends.

The following conditions govern the time and place to present proof of filing citations, postdeparture filing citations, AES downtime filing citation, exemption, or exclusion legends. The USPPI or the authorized agent is required to deliver the proof of filing citations, postdeparture filing citations, AES downtime filing citations, exemption, or exclusion legends required in § 30.7 to the exporting carrier. See Appendix D of this part for the properly formatted proof of filing citations, exemption, or exclusion legends. Failure of the USPPI or the authorized agent of either the USPPI or FPPI to comply with these requirements constitutes a violation of the regulations in this part and renders such principal party or the authorized agent subject to the penalties provided for in Subpart H of this part.

(a) *Postal exports.* The proof of filing citations, postdeparture filing citations, AES downtime filing citation, and/or exemption and exclusions legends for items being sent by mail, as required in § 30.4(b), shall be presented to the appropriate Postal Service personnel with the packages at the time of mailing. The postmaster is required to deliver the proof of filing citations or exemption legends prior to export.

(b) *Pipeline exports.* The proof of filing citations or exemption and exclusion legends for items being sent by pipeline shall be presented to the operator of a pipeline no later than four calendar days after the close of the month. See § 30.46 for requirements for the filing of export information by pipeline carriers.

(c) *Exports by other methods of transportation.* For exports sent other than by mail or pipeline, the USPPI or the authorized agent is required to deliver the proof of filing citations and/or exemption and exclusion legends to the exporting carrier in accord with the time periods set forth in § 30.4(b).

■ 11. Amend § 30.9 by revising paragraph (b) to read as follows:

§ 30.9 Transmitting and correcting Electronic Export Information.

* * * * *

(b) For shipments where the USPPI or the authorized agent has received an

error message from AES, the corrections shall take place as required. Fatal error messages are sent to filers when EEI is not accepted in the AES and update rejected messages are sent when a correction is not accepted in the AES. Fatal errors must be corrected and EEI resubmitted prior to export for shipments filed predeparture and for post-departure shipments but not later than five (5) calendar days after the date of export. Failure to respond to fatal error messages for shipments filed predeparture prior to export of the cargo subjects the principal party or authorized agent to penalties provided for in Subpart H of this part. Failing to transmit corrections to the AES constitutes a violation of the regulations in this part and renders such principal party or authorized agent subject to the penalties provided for in Subpart H of this part. Update rejected messages must be corrected as soon as possible. For EEI that generates a warning message, the correction shall be made within four (4) calendar days of receipt of the original transmission. For EEI that generates a verify message, the correction, when warranted, shall be made within four (4) calendar days of receipt of the message. A compliance alert indicates that the shipment was not reported in accordance with the FTR. The USPPI or the authorized agent is required to review its filing practices and take required corrective actions to conform with export reporting requirements.

■ 12. Amend § 30.16 by revising the introductory text and paragraph (b) and adding paragraphs (c), (d), and (e) to read as follows:

§ 30.16 Export Administration Regulations.

The Export Administration Regulations (EAR) issued by the U.S. Department of Commerce, BIS, contain additional reporting requirements pertaining to EEI (see 15 CFR parts 730–774).

* * * * *

(b) Requirements to place certain export control information in the EEI are found in the EAR. (See 15 CFR 758.1(g) and 15 CFR 758.2).

(c) Requirements to place certain export control information on export control documents for shipments exempt from AES filing requirements. (See 15 CFR 758.1(d)).

(d) A shipment destined for a country listed in Country Group E:1 as set forth in Supplement No. 1 to 15 CFR part 740 shall require EEI filings regardless of value unless such shipment is eligible for an exemption in § 30.37(y) of this part and does not require a license by BIS or any other Federal Government Agency.

(e) Goods licensed by BIS where the country of ultimate destination is the United States or goods destined to international waters where the person(s) or entity assuming control of the item(s) is a citizen or permanent resident alien of the United States or a juridical entity organized under the laws of the United States or a jurisdiction within the United States shall be excluded from EEI filing.

■ 13. Amend § 30.18 by revising paragraph (a) to read as follows:

§ 30.18 Department of State regulations.

(a) The USPPI or the authorized agent shall file export information, as required, for items on the USML of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121). Information for items identified on the USML, including those exported under an export license or license exemption, shall be filed prior to export. Items identified on the USML, including those exported under an export license or license exemption, ultimately destined to a location in the United States are not required to be reported in the AES.

* * * * *

■ 14. Amend § 30.25 by adding paragraph (c) to read as follows:

§ 30.25 Values for certain types of transactions.

* * * * *

(c) *Goods rejected after entry.* For imported goods that are cleared by CBP but subsequently rejected, an EEI must be filed to export the goods. The value to be reported in the AES is the declared import value of the goods.

■ 15. Revise § 30.26 to read as follows:

§ 30.26 Reporting of vessels, aircraft, cargo vans, and other carriers and containers.

(a) Export information shall be filed in the AES for all vessels, locomotives, aircraft, rail cars, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers when these items are moving as goods pursuant to sale or other transfer from ownership in the United States to ownership abroad. If the vessel, car, aircraft, locomotive, rail car, vehicle, or shipping container is outside Customs territory of the United States at the time of sale or transfer to foreign ownership, EEI shall be reported identifying the last port of clearance or departure from the United States prior to sale or transfer. The date of export shall be the date of sale.

(b) The country of destination to be shown in the EEI for vessels sold foreign is the country of new ownership. The country for which the vessel clears, or the country of registry of the vessel, should not be reported as the country of destination in the EEI unless such country is the country of new ownership.

■ 16. Amend § 30.28 by revising the section heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 30.28 Split shipments.

A shipment covered by a single EEI transmission booked for export on one conveyance, but divided prior to export where the exporting carrier at the port of export will file the manifest indicating that the cargo was sent on two or more of the same conveyances leaving from the same port of export of the same carrier within 24 hours. For the succeeding parts of the shipment that are not exported within 24 hours, a new EEI must be filed and amendments must be made to the original AES record. The following procedures apply for split shipments:

(a) The carrier shall deliver the manifest to the CBP Port Director with the manifest covering the conveyance on which the first part of the split shipment is exported and shall make no changes to the EEI. However, the manifest shall show in the ''number of packages'' column the actual portion of the declared total quantity being carried and shall carry a notation to indicate ''Split Shipment.''e.g., ''3 of 10—Split Shipment'' All associated manifests with the notation ''Split Shipment'' will have identical ITNs if exported within 24 hours.

(b) On each subsequent manifest covering a conveyance on which any part of a split shipment is exported, a prominent notation ''SPLIT SHIPMENT'', e.g. ''4 of 10—Split shipment'' shall be made on the manifest for identification. On the last shipment, the notation shall read ''SPLIT SHIPMENT, FINAL, e.g., ''10 of 10 Split Shipment, Final''.'' Each subsequent manifest covering a part of a split shipment shall also show in the ''number of packages'' column only the goods carried on that particular conveyance and a reference to the total number originally declared for export (for example, 5 of 11, or 5/11). Immediately following the line showing the portion of the split shipment carried on that conveyance, a notation will be made showing the bill of lading number, air waybill number, or other commercial loading documents shown in the original EEI and the portions of the originally declared total carried on each previous conveyance, together with the number and date of each such previous conveyance.

* * * * *

■ 17. Amend § 30.29 by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 30.29 Reporting of repairs and replacements.

* * * * *

(a) The return of goods previously imported only for repair and alteration.

(1) The return of non-USML goods temporarily imported for repair and alteration and declared as such on importation shall have Schedule B number 9801.10.0000. The value reported shall only include parts and labor. The value of the original product shall not be included. If the value of the parts and labor is over $2,500 per Schedule B number, then EEI must be filed.

(2) The return of USML goods temporarily imported for repair and alteration and declared as such on importation shall have Schedule B number 9801.10.0000. In the value field, report the value of the parts and labor, in the license value field, report the value designated on the export license that corresponds to the commodity being exported. An EEI must be filed regardless of value.

(b) * * *

(1) Goods that are reexported after repair under warranty shall follow the procedures in paragraph (a)(1) or (2) of this section as appropriate. It is recommended that the bill of lading, air waybill, or other loading documents include the statement, ''This product was repaired under warranty.''

(2) Goods that are replaced under warranty at no charge to the customer shall include the statement, ''Product replaced under warranty, value for EEI purposes'' on the bill of lading, air waybill, or other commercial loading documents. Place the notation below the proof of filing citation or exemption legend on the commercial document. Report the Schedule B number or HTSUSA classification commodity number of the replacement parts. For non-USML goods, report the value of the replacement parts in accordance with § 30.6(a)(17). For USML shipments report the value in accordance to § 30.6(a)(17) and (b)(15).

■ 18. Revise § 30.35 to read as follows:

§ 30.35 Procedure for shipments exempt from filing requirements.

Except as noted in § 30.2(a)(1)(iv), where an exemption from the filing requirement is provided in this subpart of this part, a legend describing the basis for the exemption shall be made on the first page of the bill of lading, air waybill, or other commercial loading document, and on the carrier's outbound manifest. The exemption legend shall reference the number of the section or provision in this part where the particular exemption is provided (see Appendix D of this part).

■ 19. Amend § 30.36 by revising paragraph (b) introductory text and paragraph (b)(2); and adding paragraph (b)(7) to read as follows:

§ 30.36 Exemption for shipments destined to Canada.

* * * * *

(b) This exemption does not apply to the following types of export shipments (These shipments shall be reported in the same manner as for all other exports, except household goods, which require limited reporting):

* * * * *

(2) Exports moving from the United States through Canada to a third destination.

* * * * *

(7) Used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations, regardless of value or country of destination.

■ 20. Amend § 30.37 by:

■ a. Revising the introductory text and paragraph (a);

■ b. Removing and reserving paragraph (e);

■ c. Revising paragraphs (g) and (h);

■ d. Removing and reserving paragraphs (q) and (r); and

■ e. Adding paragraphs (u), (v), (w), (x) and (y).

The revisions and additions read as follows:

§ 30.37 Miscellaneous exemptions.

Except as noted in § 30.2(a)(1)(iv), filing EEI is not required for the following kinds of shipments. However, the Census Bureau has the authority to periodically require the reporting of shipments that are normally exempt from filing.

(a) Exports of commodities where the value of the commodities shipped from one USPPI to one consignee on a single exporting conveyance, classified under an individual Schedule B number or HTSUSA commodity classification code is $2,500 or less. This exemption applies to individual Schedule B numbers or HTSUSA commodity classification codes regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B numbers or HTSUSA commodity classification codes valued at $2,500 or less and individual Schedule B numbers or HTSUSA commodity classification codes valued over $2,500, only those Schedule B numbers or HTSUSA commodity classification codes valued over $2,500 are required to be reported. If the filer reports multiple items of the same Schedule B number or HTSUSA commodity classification code, this exemption only applies if the total value of exports for the Schedule B number or HTSUSA commodity classification code is $2,500 or less. Items of domestic and foreign origin under the same commodity classification number must be reported separately and EEI filing is required when either is over $2,500. For the reporting of household goods see § 30.38. **Note:** this exemption does not apply to the export of vehicles. The export information for vehicles must be filed in AES regardless of value or country of destination.

* * * * *

(g) Shipments of books, maps, charts, pamphlets, and similar articles to foreign libraries, government establishments, or similar institutions.

(h) Shipments as authorized under License Exception GFT for gift parcels and humanitarian donations (15 CFR 740.12(a) and (b)).

* * * * *

(u) Exports of technical data and defense service exemptions as cited in 22 CFR 123.22(b)(3)(iii) of the ITAR.

(v) Vessels, locomotives, aircraft, rail cars, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers not considered ''shipped'' in terms of the regulations in this part, when they are moving, either loaded or empty, without transfer of ownership or title, in their capacity as carriers of goods or as instruments of such carriers.

(w) Shipments to Army Post Office, Diplomatic Post Office, Fleet Post Office.

(x) Shipments exported under license exception Baggage (BAG) (15 CFR 740.14).

(y) The following types of shipments destined for a country listed in Country Group E:1 as set forth in Supplement No. 1 to 15 CFR part 740 are not required to be filed in the AES:

(1) Shipments of published books, software, maps, charts, pamphlets, or any other similar media available for general distribution, as described in 15 CFR 734.7 to foreign libraries, or similar institutions.

(2) Shipments to U.S. government agencies and employees that are lawfully exported under License Exception GOV (15 CFR 740.11(b)(2)(i) or (ii)) valued at $2500 or less per Schedule B Number.

(3) Personal effects as described in 15 CFR 740.14(b)(1) being lawfully

exported under License Exception BAG (15 CFR 740.14).

(4) Individual gift parcels and humanitarian donations being lawfully exported under License Exception GFT (15 CFR 740.12(a) and (b)).

(5) Vessels and aircraft lawfully leaving the United States for temporary sojourn to or in a Country Group E:1 country under License Exception AVS (15 CFR 740.15).

(6) Tools of trade that will be used by a person traveling to a Country Group E:1 destination, that will be returned to the United States within one year and that are lawfully being exported to a Country Group E:1 destination under License Exception BAG (15 CFR 740.14) or License Exception TMP (15 CFR 740.9(a)).

■ 21. Revise § 30.38 to read as follows:

§ 30.38 Exemption from the requirements for reporting complete commodity information.

Except as noted in § 30.2(a)(1)(iv), report EEI for household goods. Household goods are usual and reasonable kinds and quantities of personal property necessary and appropriate for use by the USPPI in the USPPI's dwelling in a foreign country. Household goods include, but are not limited to items such as furniture, large and small appliances, kitchenware, electronics, toys, bicycles, clothing, personal adornments, and associated containers. These goods should be for use by the USPPI, not intended for sale; and shipped under a bill of lading or an air waybill. In such cases, Schedule B or HTSUSA commodity classification codes and domestic/foreign indicator shall not be required.

■ 22. Revise § 30.39 to read as follows:

§ 30.39 Special exemptions for shipments to the U.S. Armed Services.

Except as noted in § 30.2 (a)(1)(iv), filing of EEI is not required for any and all commodities, whether shipped commercially or through government channels, consigned to the U.S. Armed Services for their exclusive use, including shipments to armed services exchange systems. This exemption does not apply to articles that are on the USML and thus controlled by the ITAR and/or shipments that are not consigned to the U.S. Armed Services, regardless of whether they may be for their ultimate and exclusive use.

■ 23. Amend § 30.40 by revising the introductory text and removing paragraph (d). The revision reads as follows:

§ 30.40 Special exemptions for certain shipments to U.S. government agencies and employees.

Except as noted in § 30.2(a)(1)(iv), filing EEI is not required for the following types of shipments to U.S. government agencies and employees:

* * * * *

■ 24. Amend § 30.45 as follows:

■ a. Revise paragraph (a) introductory text and paragraphs (a)(2), (a)(4), (c), (d), and (f)(1) and (2); and

■ b. Remove paragraphs (f)(3) and (4).

The revisions read as follows:

§ 30.45 General statement of requirements for the filing of carrier manifests with proof of filing citations for the electronic submission of export information or exemption legends when Electronic Export Information filing is not required.

(a) *Requirement for filing carrier manifest.* Carriers transporting goods from the United States, Puerto Rico, or the U.S. Virgin Islands to foreign countries; from the United States or Puerto Rico to the U.S. Virgin Islands; or between the United States and Puerto Rico may not be granted clearance and may not depart until complete manifests or other required documentation (for ocean, air, and rail carriers) have been delivered to CBP Port Director in accordance with all applicable requirements under CBP regulations. The CBP may require any document it determines necessary to ensure compliance with U.S. export control laws, such as: bill of lading, air waybill, export shipping instructions, manifest, train consist, or other commercial loading documents. The required documents shall contain the appropriate AES proof of filing citations, covering all cargo for which the EEI is required; or exemption legends, covering cargo for which EEI need not be filed by the regulations of this part. Such annotation shall be without material change or amendment of proof of filing citations or exemption and exclusion legends as provided to the carrier by the USPPI or its authorized agent.

* * * * *

(2) *Aircraft.* Aircraft transporting goods shall file a complete manifest in accordance with all applicable requirements under CBP regulations. The manifest shall be filed with the CBP Port Director at the CBP port of exit. For shipments from the United States to Puerto Rico, the manifests shall be filed with the CBP Port Director at the port where the goods are unladen in Puerto Rico.

* * * * *

(4) *Carriers not required to file manifests.* Carriers allowed to file incomplete manifests under applicable CBP regulations are required, upon request, to present to the CBP Port Director the proof of filing citation, exemption or exclusion legends for each shipment, prior to departure of the vessel, aircraft, train, truck or other means of conveyance.

* * * * *

(c) *Split shipments.* When a shipment is divided by the carrier and is covered by a single EEI transmission, the split shipment procedure provided in § 30.28 shall be followed by the carrier in delivering manifests with the proof of filing citation or exemption legend to the CBP Port Director.

(d) *Attachment of commercial documents.* The manifest shall carry a notation that values stated are as presented on the bills of lading, cargo lists, export shipping documents or other commercial documents. The bills of lading, cargo lists, export shipping documents or other commercial documents shall be securely attached to the manifest in such a manner as to constitute one document and otherwise comply with CBP regulations.

* * * * *

(f) * * *

(1) Except as noted in § 30.4(b)(2), ocean, rail, truck and air exporting carriers shall not load cargo that does not have all proof of filing citations, exemption, exclusion legends, or postdeparture citations as provided for in Appendix D.

(2) Except as noted in § 30.4(b)(2), ocean, rail, truck and air exporting carriers are subject to the penalties provided for in Subpart H of this part if the exporting carrier;

* * * * *

■ 25. Revise § 30.46 to read as follows:

§ 30.46 Requirements for the filing of export information by pipeline carriers.

The operator of a pipeline may transport goods to a foreign country without the prior filing of the proof of filing citations, exemption, or exclusion legends, on the condition that within four calendar days following the end of each calendar month the operator will deliver to CBP Port Director the proof of filing citations, exemption, or exclusion legends covering all exports through the pipeline to each consignee during the month.

■ 26. Amend § 30.47 by revising paragraph (a) to read as follows:

§ 30.47 Clearance or departure of carriers under bond on incomplete manifest.

(a) For purposes of the regulations in this part, except when carriers are transporting merchandise from the United States to Puerto Rico, clearance

or permission to depart may be granted to any carrier by a CBP Port Director prior to filing of a complete manifest as required under the CBP regulations or prior to filing by the carrier of all required filing citations, exclusion and/or exemption legends, provided there is a bond as specified in 19 CFR 4.75, 4.76, and 122.74. The conditions of the bond shall be that a complete manifest, where a manifest is required by the regulations in this part and all required filing citations, exclusion and/or exemption legends shall be filed by the carrier in accordance with all applicable requirements under CBP regulations.

(1) For manifests submitted electronically through the AES, the condition of the bond shall be that the manifest and all required filing citations, exclusion, and/or exemption legends shall be completed in accordance with all applicable requirements under CBP regulations.

(2) For rail carriers to Canada, the conditions of the bond shall be that the manifest and all filing citations, exclusion, and/or exemption legends shall be filed with CBP in accordance with all applicable requirements under CBP regulations.

(3) For carriers under bond on incomplete manifest, upon request, a list of filing citations, exclusion, and/or exemption legends must be presented to a CBP Export Control Officer at the port of export prior to departure by the carrier.

* * * * *

■ 27. Amend § 30.50 by revising paragraph (b)(5) and adding paragraph (c) to read as follows:

§ 30.50 General requirements for filing import entries.

* * * * *

(b) * * *

(5) Electronic CBP Form 214 Admissions (e214).

(c) The Kimberley Process Certificates must be faxed prior to exportation to the Census Bureau on (800) 457–7328 or provided by other methods as permitted by the Census Bureau.

■ 28. Revise § 30.52 to read as follows:

§ 30.52 Foreign Trade Zones (FTZ).

When goods are withdrawn from a FTZ for export to a foreign country, the export shall be reported in accordance with § 30.2. Foreign goods admitted into FTZs shall be reported as a general import. Statistical requirements for zone admissions are provided to the Census Bureau via CBP's Automated Broker Interface (ABI) electronic 214 (e214) program or the CBP Form 214A Application for Foreign Trade Zone Admission and/or Status Designation. Refer to CBP Web site at *www.cbp.gov* to download the ''Foreign Trade Zone Manual'' where instructions for completing the paper CBP Form 214A documents are provided in Appendix C. When goods are withdrawn for domestic consumption or entry into a bonded warehouse, the withdrawal shall be reported on CBP 7501 or through the ABI in accordance with CBP regulations. The instructions and definitions for completing the e214 are provided in 19 CFR 146. The following data items are required to be filed on the 214A, for statistical purposes:

(a) Zone Number and Location (Address)
(b) Port Code
(c) Importing Vessel and Flag/Other Carrier
(d) Export Date
(e) Import Date
(f) Zone Admission Number
(g) U.S. Port of Unlading
(h) In-bond Carrier
(i) Foreign Port of Lading
(j) Bill of Lading/AWB Number
(k) Number of Packages & Country of Origin
(l) Description of Merchandise
(m) HTSUSA Number
(n) Quantity (HTSUSA)
(o) Gross Weight
(p) Separate Value and Aggregate Charges
(q) Status Designation

■ 29. Amend § 30.54 by revising paragraph (b) to read as follows:

§ 30.54 Special provisions for imports from Canada.

* * * * *

(b) All other imports from Canada, including certain softwood lumber products not covered in paragraph (a) of this section, will require the two letter designation of the Canadian province of origin to be reported on U.S. entry summary records. This information is required only for U.S. imports that under applicable CBP rules of origin are determined to originate in Canada. For nonmanufactured goods determined to be of Canadian origin, the province of origin is defined as the region where the exported goods were originally grown, mined, or otherwise produced. For goods of Canadian origin that are manufactured or assembled in Canada, with the exception of the certain softwood lumber products described in paragraph (a) of this section, the region of origin is that in which the final manufacture or assembly is performed prior to exporting that good to the United States. In cases where the region in which the goods were manufactured, assembled, grown, mined, or otherwise produced is unknown, the province in which the Canadian vendor is located can be reported. For those reporting on paper forms the region of origin code replaces the country of origin code on CBP Form 7501, entry summary form.

* * * * *

■ 30. Amend § 30.71 by revising paragraph (b)(1), redesignating paragraphs (b)(2) and (3) as paragraphs (b)(3) and (4), revising the newly redesignated (b)(3) and adding new paragraph (b)(2) to read as follows:

§ 30.71 False or fraudulent reporting on or misuse of the Automated Export System.

* * * * *

(b) * * *

(1) *Failure to file violations.* A failure to file violation occurs if the government discovers that there is no AES record for an export transaction by the applicable period prescribed in § 30.4 of this part. Any AES record filed later than ten (10) calendar days after the due date will also be considered a failure to file regardless of whether the violation was or was not discovered by the government. A civil penalty not to exceed $10,000 may be imposed for a failure to file violation.

(2) *Late filing violations.* A late filing violation occurs when an AES record is filed after the applicable period prescribed in § 30.4 of this part. A civil penalty not to exceed $1,100 for each day of delinquency, but not more than $10,000 per violation, may be imposed for failure to file timely export information or reports in connection with the exportation or transportation of cargo. (See 19 CFR part 192)

(3) *Filing false/misleading information, furtherance of illegal activities and penalties for other violations.* A civil penalty not to exceed $10,000 per violation may be imposed for each violation of provisions of this part other than any violation encompassed by paragraph (b)(1) or (b)(2) of this section. Such penalty may be in addition to any other penalty imposed by law.

* * * * *

■ 31. Amend § 30.74 by revising paragraphs (c)(3)(iv), (c)(3)(v), and (c)(5) and adding paragraphs (c)(3)(vi) and (c)(3)(vii) to read a follows:

§ 30.74 Voluntary self-disclosure.

* * * * *

(c) * * *

(3) * * *

(iv) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(v) A description of any mitigating circumstances;

(vi) Corrective measures taken; and

(vii) ITNs of the missed and/or corrected shipments.

* * * * *

(5) *Where to make voluntary self-disclosures.* With the exception of voluntary disclosures of manifest violations under § 30.47(c), the information constituting a Voluntary Self-Disclosures or any other correspondence pertaining to a Voluntary Self-Disclosures may be submitted to: Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233–6700, or by fax on (301) 763–8835. Additional instructions are found at *www.census.gov/trade.*

* * * * *

■ 32. In Appendix B to Part 30, revise parts II and III to read as follows:

Appendix B to Part 30—AES Filing Codes

* * * * *

Part II—Export Information Codes

TP—Temporary exports of domestic merchandise
IP—Shipments of merchandise imported under a Temporary Import Bond for further manufacturing or processing
IR—Shipments of merchandise imported under a Temporary Import Bond for repair
CH—Shipments of goods donated for charity
FS—Foreign Military Sales
ZD—North American Free Trade Agreements (NAFTA) duty deferral shipments
OS—All other exports
HV—Shipments of personally owned vehicles
HH—Household and personal effects
TE—Temporary exports to be returned to the United States
TL—Merchandise leased for less than a year
IS—Shipments of merchandise imported under a Temporary Import Bond for return in the same condition
CR—Shipments moving under a carnet
GP—U.S. Government shipments
MS—Shipments consigned to the U.S. Armed Forces
GS—Shipments to U.S. Government agencies for their use
UG—Gift parcels under Bureau of Industry and Security License Exception GFT
DD—Other exemptions:
Currency
Airline tickets
Bank notes
Internal revenue stamps
State liquor stamps
Advertising literature
Shipments of temporary imports by foreign entities for their use
IW—International water shipments
CI—Impelled shipments of goods donated for relief or charity
FI—Impelled Foreign Military Sales Program
OI—All other exports (impelled)
(For Manifest Use Only by AES Carriers)
AE Shipment information filed through AES
(See §§ 30.50 through 30.58 for information on filing exemptions.)

Part III—License Codes

Department of Commerce, Bureau of Industry and Security (BIS), Licenses

C30 Licenses issued by BIS authorizing an export, reexport, or other regulated activity.
C31 SCL—Special Comprehensive License
C32 NLR—No License Required (controlled for other than or in addition to Anti-Terrorism)
C33 NLR—No License Required (All others, including Anti-Terrorism controls ONLY)
C35 LVS—Limited Value Shipments
C36 GBS—Shipments to B Countries
C37 CIV—Civil End Users
C38 TSR—Restricted Technology and Software
C39 CTP—Computers
C40 TMP—Temporary Imports, Exports, and Re-exports
C41 RPL—Servicing and Replacement of Parts and Equipment
C42 GOV—Government and International Organizations
C43 GFT—Gift Parcels and Humanitarian Donations
C44 TSU—Technology and Software—Unrestricted
C45 BAG—Baggage
C46 AVS—Aircraft and Vessels (AES not required)
C49 TAPS —Trans-Alaska Pipeline Authorization Act
C50 ENC—Encryption Commodities and Software
C51 AGR—License Exception Agricultural Commodities
C53 APP—Adjusted Peak Performance (Computers)
C54 SS–WRC—Western Red Cedar
C55 SS-Sample—Crude Oil Samples
C56 SS–SPR—Strategic Petroleum Reserves
C57 VEU—Validated End User Authorization
C58 CCD—Consumer Communication Devices
C59 STA—Strategic Trade Authorization

Department of Energy/National Nuclear Security Administration (DOE/NNSA) Codes

E01—DOE/NNSA

Nuclear Regulatory Commission (NRC) Codes

N01 NRC Form 250/250A—NRC Form 250/250A
N02 NRC General License—NRC 'General' Export License

Department of State, Directorate of Defense Trade Controls (DDTC) Codes

SAG—Agreements
SCA—Canadian ITAR Exemption
S00—License Exemption Citation
S05 DSP–5—Permanent export of unclassified defense articles and services
S61 DSP–61—Temporary import of unclassified articles
S73 DSP–73—Temporary export of unclassified articles
S85 DSP–85—Temporary or permanent import or export of classified articles
S94 DSP–94—Foreign Military Sales

Department of Treasury, Office of Foreign Assets Control (OFAC) Codes

T10—OFAC Specific License
T11—OFAC General License
T12—Kimberley Process Certificate Number

Other License Types

OPA—Other Partnership Agency License

For export license exemptions under International Traffic in Arms Regulations, refer to 22 CFR 120–130 of the ITAR for the list of export license exemptions.

■ 33. Revise Appendix C to Part 30 to read as follows:

Appendix C to Part 30—Summary of Exemptions and Exclusions From EEI Filing

A. Except as noted in § 30.2 (a)(1)(iv), filing EEI is not required for the following types of shipments:[1]

1. Exemption for shipments destined to Canada (§ 30.36).

2. Valued $2,500 or less per Schedule B/HTSUSA classification for commodities shipped from one USPPI to one consignee on a single carrier (§ 30.37(a)).

3. Tools of the trade and their containers that are usual and reasonable kinds and quantities of commodities and software intended for use by individual USPPIs or by employees or representatives of the exporting company in furthering the enterprises and undertakings of the USPPI abroad (§ 30.37(b)).

4. Shipments from one point in the United States to another point in the United States by routes passing through Canada or Mexico (§ 30.37(c)).

5. Shipments from one point in Canada or Mexico to another point in the same country by routes through the United States (§ 30.37(d)).

6. Exports of technology and software as defined in 15 CFR part 772 of the EAR that do not require an export license. However, EEI is required for mass-market software (§ 30.37(f)).

7. Shipments of books, maps, charts, pamphlets, and similar articles to foreign libraries, government establishments, or similar institutions (§ 30.37(g)).

8. Shipments as authorized under License Exception GFT for gift parcels and humanitarian donations (15 CFR 740.12(a) and (b)); § 30.37(h).

9. Diplomatic pouches and their contents (§ 30.37(i)).

10. Human remains and accompanying appropriate receptacles and flowers (§ 30.37(j)).

11. Shipments of interplant correspondence, executed invoices and other documents, and other shipments of company business records from a U.S. firm to its subsidiary or affiliate. This excludes highly

[1] Exemption from the requirements for reporting complete commodity information is covered in § 30.38; Special exemptions for shipments to the U.S. Armed Services are covered in § 30.39; and special exemptions for certain shipments to U.S. Government agencies and employees are covered in § 30.40.

technical plans, correspondence, etc. that could be licensed (§ 30.37(k)).

12. Shipments of pets as baggage (§ 30.37(l)).

13. Carrier's stores, not shipped under a bill of lading or an air waybill, supplies and equipment, including usual and reasonable kinds and quantities of bunker fuel, deck engine and steward department stores, provisions and supplies, medicinal and surgical supplies, food stores, slop chest articles, and saloon stores or supplies for use or consumption on board and not intended for unlading in a foreign country (§ 30.37(m)).

14. Dunnage not shipped under a bill of lading or an air waybill, of usual and reasonable kinds and quantities not intended for unlading in a foreign country (§ 30.37(n)).

15. Shipments of aircraft parts and equipment; food, saloon, slop chest, and related stores; and provisions and supplies for use on aircraft by a U.S. airline. (EAR license exception (AVS) for aircraft and vessels 15 CFR 740.15(c); § 30.37(o)).

16. Baggage and personal effects, accompanied or unaccompanied, of persons leaving the United States including members of crews on vessels and aircraft, when they are not shipped as cargo under a bill of lading or an air waybill or other commercial loading documents and do not require an export license (§ 30.37(p)).

17. Issued banknotes and securities and coins in circulation exported as evidence of financial claims. The EEI must be filed for unissued bank notes and securities and coins not in circulation (such as bank notes printed in the United States and exported in fulfillment of the printing contract or as part of collections), which should be reported at their commercial or current value (§ 30.37(s)).

18. Documents used in international transactions, documents moving out of the United States to facilitate international transactions including airline tickets, internal revenue stamps, liquor stamps, and advertising literature. Export of such documents in fulfillment of a contract for their production, however, are not exempt and must be reported at the transaction value for their production (§ 30.37(t)).

19. Exports of technical data and defense service exemptions as defined in 22 CFR 123.22(b)(3)(iii) of the ITAR (§ 30.37(u)).

20. Vessels, locomotives, aircraft, rail cars, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers not considered ''shipped'' in terms of the regulations in this part, when they are moving, either loaded or empty, without transfer of ownership or title, in their capacity as carriers of goods or as instruments of such carriers, and EEI filing is not required. (§ 30.37(v)).

21. Shipments to APO/DPO/FPO (§ 30.37(w))

22. Shipments exported under license exception BAG (§ 30.37(x))

23. Certain shipments destined to Country Group E:1 (§ 30.37(y))

B. The following types of transactions are outside the scope of the FTR and shall be excluded from EEI filing:

1. Goods shipped under CBP bond through the United States, Puerto Rico, or the U.S. Virgin Islands from one foreign country or area to another where such goods do not enter the consumption channels of the United States.

2. Except Puerto Rico and U.S. Virgin Islands, goods shipped from the U.S. territories, and goods shipped between the United States and these territories do not require EEI filing. However, goods transiting U.S. territories to foreign destinations require EEI filing.

3. Electronic transmissions and intangible transfers. (See Subpart B of this part for export control requirements for these types of transactions.)

4. Goods shipped to Guantanamo Bay Naval Base in Cuba from the United States, Puerto Rico, or the U.S. Virgin Islands and from Guantanamo Bay Naval Base to the United States, Puerto Rico, or the U.S. Virgin Islands. (See § 30.39 for filing requirements for shipments exported to the U.S. Armed Services.)

5. Goods licensed by a U.S. Federal Government agency where the country of ultimate destination is the United States or goods destined to international waters where the person(s) or entity assuming control of the item(s) is a citizen or permanent resident alien of the United States or a juridical entity organized under the laws of the United States or a jurisdiction within the United States.

■ 35. Revise Appendix D to Part 30 to read as follows:

Appendix D to Part 30—AES Filing Citation and Exemption Legends

I. USML Proof of Filing Citation	AES ITN; Example: AES X20100101987654.
II. AES Proof of Filing Citation subpart A § 30.7	AES ITN; Example: AES X20100101987654.
III. AES Postdeparture Citation—USPPI; USPPI is filing the EEI	AESPOST USPPI EIN mm/dd/yyyy; Example: AESPOST 12345678912 01/01/2010.
IV. Postdeparture Citation—Agent; Agent is filing the EEI	AESPOST USPPI EIN—Filer ID mm/dd/yyyy; Example: AESPOST 12345678912—987654321 01/01/2010.
V. AES Downtime Citation—Use only when AES or AES*Direct* is unavailable.	AESDOWN Filer ID mm/dd/yyyy; Example: AESDOWN 123456789 01/01/2010.
VI. Exemption for Shipments to Canada	NOEEI § 30.36.
VII. Exemption for Low-Value Shipments	NOEEI § 30.37(a).
VIII. Miscellaneous Exemption Statements are found in 15 CFR 30 Subpart D § 30.37(b) through § 30.37(y).	NOEEI § 30.37 (site corresponding alphabet).
IX. Special Exemption for Shipments to the U.S. Armed Forces	NOEEI § 30.39.
X. Special Exemptions for Certain Shipments to U.S. Government Agencies and Employees (Exemption Statements are found in 15 CFR 30 Subpart D § 30.40(a) through § 30.40(d).	NOEEI § 30.40 (site corresponding alphabet).
XI. Split Shipments. Split Shipments should be referenced as such on the manifest in accordance with provisions contained in § 30.28, Split Shipments. The notation should be easily identifiable on the manifest. It is preferable to include a reference to a split shipment in the exemption statements cited in the example, the notation SS should be included at the end of the appropriate exemption statement.	AES ITN SS; Example: AES X20100101987654 SS.
XII. Proof of filing citations by pipeline	NOEEI § 30.8(b).

■ 36. Revise Appendix E to Part 30 to read as follows:

Appendix E to Part 30—FTSR to FTR Concordance

FTSR	FTSR Regulatory topic	FTR	FTR Regulatory topic
Subpart A—General Requirements—USPPI			
30.1	General statement of requirement for Shipper's Export Declarations (SEDs).	30.2	General requirements for filing Electronic Export Information (EEI).
30.1(a)	General requirements for filing SEDs		General requirements for filing EEI.

FTSR	FTSR Regulatory topic	FTR	FTR Regulatory topic
30.1(b)	General requirements for reporting regarding method of transportation.	.....	NA.
30.1(c)	AES as an alternative to SED reporting	.....	NA.
30.1(d)	Electronic transmissions and intangible transfers	30.2 (d)(3)	Exclusions from filing EEI.
30.2	Related export control requirements	30.15	Export control and licensing requirements introduction.
		30.16	EAR requirements for export information on shipments from U.S. Possessions to foreign destinations or areas.
		30.17	Customs and Border Protection Regulations.
30.3	Shipper's Export Declaration forms	.....	NA.
30.4	Preparation and signature of Shipper's Export Declarations (SED).	30.3	Electronic Export Information filer requirements, parties to export transactions, responsibilities of parties to export transactions.
30.4(a)	General requirements (SED)	30.3(a)	General Requirements.
		30.3(b)	Parties to the export transaction.
30.4(b)	Responsibilities of parties in export transactions	30.3(c)	General responsibilities of parties in export transactions.
		30.3(d)	Filer responsibilities.
30.4(c)	Responsibilities of parties in a routed export transactions	30.3(e)	Responsibilities of parties in a routed export transaction.
30.4(d)	Information on the Shipper's Export Declaration (SED) or Automated Export System (AES) record.	30.3(a)	General requirements.
30.4(e)	Authorizing a forwarding or other agent	30.3(f)	Authorizing an agent.
30.4(f)	Format requirements for SEDs	.....	NA.
30.5	Number and copies of Shipper's Export Declaration required.	.....	NA.
30.6	Requirements as to separate Shipper's Export Declarations.	.....	NA.
30.7	Information required on Shipper's Export Declarations	.....	NA.
30.8	Additional information required on Shipper's Export Declaration for In-Transit Goods (ENG Form 7513).	.....	NA.
30.9	Requirements for separation and alignment of items on Shipper's Export Declarations.	.....	NA.
30.10	Continuation sheets for Shipper's Export Declaration	.....	NA.
30.11	Authority to require production of document	30.10(b)	Authority to require production of documents and retaining electronic data.
30.12	Time and place for presenting the SED, exemption legends or proof of filing citations.	30.4	Electronic export information filing procedures, deadlines, and certification statements.
		30.8	Time and place for presenting proof of filing citations, postdeparture filing citations, AES downtime citations, and exemption legends.
30.15	Procedure for presentation of declarations covering shipments from an interior point.	.....	NA.
30.16	Corrections to Shipper's Export Declarations	30.9	Transmitting and correcting Electronic Export Information.
	Subpart B—General Requirements—Exporting Carriers		
30.20	General statement of requirement for the filing of manifests.	30.45	General statement of requirements for the filing of carrier manifests with proof of filing citations.
30.20(a)	Carriers transporting merchandise from the United States, Puerto Rico, or U.S. territories to foreign countries.	30.45(a)	Requirements for filing carrier manifest.
30.20(b)	For carriers transporting merchandise from the United States to Puerto Rico.	30.45(a)	Requirements for filing carrier manifest.
30.20(c)	Except as otherwise specifically provided, declarations should not be filed at the place where the shipment originates.	30.45(a)	Requirements for filing carrier manifest.
30.20(d)	For purposes of these regulations, the port of exportation is defined as.	30.1(c)	Definition used with EEI.
30.21	Requirements for the filing of Manifests	30.45	General statement of requirements for the filing of carrier manifests with proof of filing citations for the electronic submission of export information or exemption legends when EEI is not required.
30.21(a)	Vessel	30.45(a)(1)	Vessel.
30.21(b)	Aircraft	30.45(a)(2)	Aircraft.
30.21(c)	Rail Carrier	30.45(a)(3)	Rail Carrier.
30.21(d)	Carriers not required to file manifests	30.45(a)(4)	Carriers not required to file manifests.
30.22(a)	Requirements for the filing of SEDs or AES exemption legends and AES proof of filing citations by departing carriers.	30.8	Time and place for presenting proof of filing citation, and exemption legends.
30.22(b)	The exporting carrier shall be responsible for the accuracy of the following items of information.	.....	NA.

FTSR	FTSR Regulatory topic	FTR	FTR Regulatory topic
30.22(c)	Except as provided in paragraph (d) of this section, when a transportation company finds, prior to the filing of declarations and manifest as provided in paragraph (a) of this section, that due to circumstances beyond the control of the transportation company or to inadvertence, a portion of the merchandise covered by an individual Shipper's Export Declaration has not been exported on the intended carrier.	.....	NA.
30.22(d)	When a shipment by air covered by a single Shipper's Export Declaration is divided by the transportation company and exported in more than one aircraft of the transportation.	30.45(c)	Split shipments.
30.22(e)	Exporting carriers are authorized to amend incorrect shipping weights reported on Shipper's Export Declarations.	.....	NA.
30.23	Requirements for the filing of Shipper's Export Declarations by pipeline carriers..	30.46	Requirements for the filing of export information by pipeline carriers.
30.24	Clearance or departure of carriers under bond on incomplete manifest on Shipper's Export Declarations.	30.47	Clearance or departure of carriers under bond on incomplete manifests.
	Subpart C—Special Provisions Applicable Under Particular Circumstances		
30.30	Values for certain types of transactions	30.25	Values for certain types of transactions.
30.31	Identification of certain nonstatistical and other unusual transactions.	30.29	Reporting of repairs and replacements.
30.31(a)	Merchandise exported for repair only, and other temporary exports.	30.29(a)	The return of goods previously imported for repair.
30.31(b)	The return of merchandise previously imported for repair only.	30.29(b)	Goods that are covered under warranty and other temporary exports.
30.31(c)	Shipments of material in connection with construction, maintenance, and related work being done on projects for the U.S. Armed Forces.	.....	NA.
30.33	Vessels, planes, cargo vans, and other carriers and containers sold foreign.	30.26	Reporting of vessels, aircraft, cargo vans, and other carriers and containers.
30.34	Return of exported cargo to the United States prior to reaching its final destination.	30.27	Return of exported cargo to the United States prior to reaching its final destination.
30.37	Exceptions from the requirement for reporting complete commodity detail on the Shipper's Export Declaration.	30.38	Exemption from the requirements for reporting complete commodity information.
30.37(a)	Where it can be determined that particular types of U.S. Government shipments, or shipments for government projects, are of such nature that they should not be included in the export statistics.	30.39	Special exemptions for shipments to the U.S. Armed Services. (Note, this section does not specifically address construction materials nor related work being done on projects).
30.37(b)	Special exemptions to specific portions of the requirements of § 30.7 with respect to the reporting of detailed information.	.....	NA.
30.39	Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.	.....	NA.
30.40	Single declaration for multiple consignees	.....	NA.
30.41	"Split shipments" by air	30.28	Split shipments.
	Subpart D—Exemptions from the requirements for the Filing of Shipper's Export Declarations		
30.50	Procedure for shipments exempt from the requirements for Shipper's Export Declarations.	30.35	Procedure for shipments exempt from filing requirements.
30.51	Government shipments not generally exempt	30.39	Special exemption for shipments to the U.S. Armed Services.
30.52	Special exemptions for shipments to the U.S. Armed Services.	30.39	Special exemptions for shipments to the U.S. Armed Services.
30.53	Special exemptions for certain shipments to U.S. Government agencies and employees.	30.40	Special exemptions for certain shipments to U.S. Government agencies and employees.
30.53(e)	All commodities shipped to and for the exclusive use of the Panama Canal Zone Government or the Panama Canal Company.	.....	NA.
30.55	Miscellaneous exemptions	30.37	Miscellaneous exemptions.
30.55(a)	Diplomatic pouches and their contents	30.37(i)	Diplomatic pouches and their contents.
30.55(b)	Human remains and accompanying appropriate receptacles and flowers.	30.37(j)	Human remains and accompanying appropriate receptacles and flowers.
30.55(c)	Shipments from one point in the United States to another thereof by routes passing through Mexico.	30.37(c)	Shipments from one point in the United States to another point in the United States by routes passing through Canada or Mexico.
30.55(d)	Shipments from one point in Mexico to another point thereof by routes through the United States.	30.37(d)	Shipments from one point in Canada or Mexico to another point in the same country by routes through the United States.

FTSR	FTSR Regulatory topic	FTR	FTR Regulatory topic
30.55(e)	Shipments, other than by vessel, or merchandise for which no validated export licenses are required, transported inbond through the United States, and exported from another U.S. port, or transshipped and exported directly from the port of arrival.	30.2(d)(1)	Shipments, transported in-bond through the United States, and exported from another U.S. port, or transshipped and exported directly from the port of arrival.
30.55(f)	Shipments to foreign libraries, government establishments, or similar institutions, as provided in § 30.53(d).	30.37(g)	Shipments to foreign libraries, government establishments, or similar institutions, as provided in § 30.40(d).
30.55(g)	Shipments of single gift parcels as authorized by the Bureau of Industry and Security under License Exception GFT, see 15 CFR 740.12 of the EAR.	30.37(h)	Shipments authorized by License Exception GFT for gift parcels, humanitarian donations.
30.55(h)	Except as noted in paragraph (h)(2) of this section, exports of commodities where the value of the commodities shipped from one exporter to one consignee on a single exporting carrier, classified under an individual Schedule B number, is $2,500 or less.	30.37(a)	Except as noted in § 30.2(a)(1)(iv), exports of commodities where the value of the commodities shipped USPPI to one consignee on a single exporting carrier, classified under an individual Schedule B or HTSUSA commodity classification code, is $2,500 or less.
30.55(i)	Shipments of interplant correspondence, executed invoices, and other documents and other shipments of company business records from a U.S. firm to its subsidiary or affiliate.	30.37(k)	Shipments of interplant correspondence, executed invoices, and other documents and other shipments of company business records from a U.S. firm to its subsidiary or affiliate.
30.55(j)	Shipments of pets as baggage, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.	30.37(l)	Shipments of pets as baggage, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.
30.55(k)	Shipments for use in connection with NASA tracking systems under Office of Export Administration Project License DL–5355–S.	.....	NA.
30.55(l)	Shipments of aircraft parts and equipment, and food, saloon, slop chest, and related stores, provisions, and supplies for use on aircraft by a U.S. airline to its own installations, aircraft, and agent aboard, under Department of Commerce, Office of Export Administration General License, RCS.	.....	NA.
30.55(m) ...	Shipments for use in connection with NOAA operations under the Office of Export Administration General License G–NOAA.	.....	NA.
30.55(n)	Exports of technology and software as defined in 15 CFR 772 of the EAR that do not require an export license.	30.37(f)	Exports of technology and software as defined in 15 CFR 772 of the EAR that do not require an export license.
30.55(o)	Intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.	30.2(d)(3)	Intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.
30.56	Conditional Exemptions	30.37	Miscellaneous exemptions.
30.56(a)	Baggage and personal effects	30.38	Exemption from the requirements for reporting complete commodity information.
30.56(b)	Tools of trade.	30.37(b)	Tools of trade
30.56(c)	Carriers' stores.	30.37(m)	Carriers' stores
30.56(d)	Dunnage.	30.37(n)	Dunnage
30.57	Information on export declarations for shipments of types of goods covered by § 30.56 not conditionally exempt.	.....	NA.
30.58	Exemption for shipments from the United States to Canada.	30.36	Exemption for shipments destined to Canada.
	Subpart E—Electronic Filing Requirements—Shipper's Export Information		
30.60	General requirements for filing export and manifest data electronically using the Automated Export System (AES).	30.2	General requirements for filing Electronic Export Information.
30.60(a)	Participation	.....	NA.
30.60(b)	Letter of Intent	30.5(a)(1)	Postdeparture filing application.
30.60(c)	General filing and transmission requirements	30.4	NA.
30.60(d)	General responsibilities of exporters, filing agents, and sea carriers	30.3	Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.
30.61	Electronic filing options	30.4	Electronic Export Information filing procedure, deadlines, and certification statement.
30.62	AES Certification, qualifications, and standards	30.5	EEI filing application and certification processes and standards.
30.63	Information required to be reported electronically through AES (data elements).	30.6	Electronic Export Information data elements.
30.64	Transmitting and correcting AES information	30.9	Transmitting and correcting Electronic Export Information.

FTSR	FTSR Regulatory topic	FTR	FTR Regulatory topic
30.65	Annotating the proper exemption legends or proof of filing citations for shipments transmitted electronically.	30.7	Annotating the bill of lading, air waybill, and other commercial loading documents with the proper proof of filing citations, approved postdeparture filing citations, downtime filing citation, or exemption legends.
30.66	Recordkeeping and requirements	30.5(f)	Support.
30.66	Support, documentation, and recordkeeping requirements.	30.10	Retention of export information and the authority to require production of documents.
	Subpart F—General Requirements—Importers		
30.70	Statistical information required on import entries	30.50	General requirements for filing import entries.
		30.51	Statistical information required for import entries.
30.80	Imports from Canada	30.54	Special provisions for imports from Canada.
30.81	Imports of merchandise into Guam	.....	NA.
30.82	Identification of U.S. merchandise returned for repair and reexport.	30.53	Import of goods returned for repair.
30.83	Statistical copy of mail and informal entries	.....	NA.
	Subpart H—General Administrative Provisions		
30.90	Confidential information, import entries, and withdrawals	30.55	Confidentiality information, import entries, and withdrawals.
30.91	Confidential information, Shipper's Export Declarations ..	30.60	Confidentiality of Electronic Export Information.
30.92	Statistical classification schedules	30.61	Statistical classification schedules.
30.93	Emergency exceptions	30.62	Emergency exceptions.
30.94	Instructions to CBP	.....	NA.
30.95	Penalties for violations	.....	Subpart H.
30.95(a)	Exports (reexports) of rough diamonds	30.70	Violation of the Clean Diamond Trade Act.
30.95(b)	Exports of other than rough diamonds	30.71	False or fraudulent reporting.
30.99	OMB control numbers assigned pursuant to the Paperwork Reduction Act.	30.63	Office of Management and Budget control numbers assigned pursuant to the Paperwork Reduction Act.

■ 34. Revise Appendix F to Part 30 to read as follows:

Appendix F to Part 30—FTR to FTSR Concordance

FTR	FTR Regulatory topic	FTSR	FTSR Regulatory topic
	Subpart A—General Requirements		
30.1	Purpose and definitions	NA	NA.
30.2	General requirements for filing Electronic Export Information.	30.1	General statement of requirement for Shipper's Export Declarations.
30.2(a)	Filing Requirements	.....	Filing Requirements.
30.2(b)	General requirements	.....	NA.
30.2(c)	Certification and filing requirements	.....	NA.
30.2(d)	Exclusions from filing EEI	.....	NA.
30.2(e)	Penalties	.....	NA.
30.3	Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.	30.4	Preparation and signature of Shipper's Export Declaration.
30.4	Electronic Export Information filing procedures, deadlines, and certification statements.	30.61	Electronic filing options.
30.4(a)	EEI transmitted predeparture	30.61(a)	EEI transmitted predeparture.
30.4(b)	Filing deadlines for EEI transmitted predeparture	.....	NA.
30.4(c)	EEI transmitted postdeparture	30.61(b)	EEI transmitted postdeparture.
30.4(d)	Proof of filing citation or exemption legend	30.12(d)	Exports file via AES.
30.5	Electronic Export Information filing application and certification processes and standards.	30.62	AES Certification, qualifications, and standards.
30.5(a)	AES application process	30.60(b)	AES Participant Application.
30.5(b)	Certification process	30.66	Record keeping and requirements.
30.5(c)	Postdeparture filing approval process	.....	
30.5(d)	Electronic Export Information filing standards	.....	
30.5(e)	Monitoring the filing of Electronic Export Information	.....	
30.5(f)	Support	.....	
30.6	Electronic Export Information data elements	30.63	Information required to be reported electronically through AES (data elements).
30.7	Annotating the bill of lading	30.65	Annotating the proper exemption legends or proof of filing citations.
30.8	Time and place for presenting proof of filing citations, postdeparture filing citations, downtime filing citation, or exemption legends.	30.12	Time and place for presenting the SED, exemption legends, or proof of filing citations.
30.9	Transmitting and correcting Electronic Export Information	30.64	Transmitting and correcting AES information.

FTR	FTR Regulatory topic	FTSR	FTSR Regulatory topic
		30.16	Corrections to Shipper's Export Declarations.
30.10(a)	Retention of Export information	30.66	Support, documentation and recordkeeping, and documentation requirements.
30.10(b)	Authority to require production of documents	30.11	Authority to require production of documents.
	Subpart B—Export Control and Licensing Requirements		
30.15	Introduction	30.2	Related export control requirements.
30.16	Bureau of Industry and Security regulations	30.2	Related export control requirements.
30.17	U.S. Customs and Border Protection regulations	30.2	Related export control requirements.
30.18	Department of State regulations	30.2	Related export control requirements.
30.19	Other Federal agency regulations	30.2	Related export control requirements.
	Subpart C—Special Provisions and Specific-Type Transactions		
30.25	Values for certain types of transactions	30.30	Values for certain types of transactions.
30.26	Reporting of vessels, aircraft, cargo vans, and other carriers and containers.	30.33	Vessels, planes, cargo vans, and other carriers and containers sold foreign.
30.27	Return of exported cargo to the United States prior to reaching its final destination.	30.34	Return of exported cargo to the United States prior to reaching its final destination.
30.28	Split shipments	30.41	"Split shipments" by air.
30.29	Reporting of repairs and replacements	30.31	Identification of certain nonstatistical and other unusual transactions.
	Subpart D—Exemptions from the Requirements for the Filing of Electronic Export Information		
30.35	Procedure for shipments exempt from filing requirements	30.50	Procedure for shipments exempt from the requirements for SEDs.
30.36	Exemption for shipments destined to Canada	30.58	Exemption for shipments from the United States to Canada.
30.37	Miscellaneous exemptions	30.55	Miscellaneous exemptions.
		30.55	Conditional exemptions.
30.37(a)	Except as noted in § 30.2(a)(1)(iv), exports of commodities where the value * * * is $2,500 or less.	30.55(h)	Except as noted in paragraph h(2) of this section, exports of commodities where the value * * * is $2,500 or less.
30.37(b)	Tools of trade	30.56(b)	Tools of trade
30.37(c)	Shipments from one point in the United States to another point in the United States by routes passing through Canada or Mexico.	30.55(c)	Shipments from one point in the United States to another thereof by routes passing through Mexico.
		30.58(a)	* * * this exemption also applies to shipments from one point in the United States or Canada to another point thereof * * *
30.37(d)	Shipments from one point in Canada or Mexico to another point thereof by routes through the United States.	30.55(d)	Shipments from one point in Canada or Mexico to another point in the same country by routes through the United States.
		30.58(a)	* * * this exemption also applies to shipments from one point in the United States or Canada to another point thereof * * *
30.37(e)	Reserved	.....	NA.
30.37(f)	Exports of technology and software as defined in 15 CFR of the EAR that do not require an export license.	30.55(n)	Exports of technology and software as defined in 15 CFR 772 of the EAR that do not require an export license
30.37(g)	Shipments to foreign libraries, government establishments, or similar institutions.	30.55(f)	Shipments to foreign libraries, government establishments, or similar institutions, as provided in § 30.53(d).
30.37(h)	Shipments as authorized under License Exception GFT for gift parcels and humanitarian donations.	30.55(g)	Shipments of single gift parcels as authorized by the Bureau of Industry and Security under license exception GFT.
30.37(i)	Diplomatic pouches and their contents	30.55(a)	Diplomatic pouches and their contents.
30.37(j)	Human remains and accompanying appropriate receptacles and flowers.	30.55(b)	Human remains and accompanying appropriate receptacles and flowers.
30.37(k)	Shipments of interplant correspondence, executed invoices and other documents, and other shipments of company business records from a U.S. firm to its subsidiary or affiliate.	30.55(i)	Shipments of interplant correspondence, executed invoices and other documents, and other shipments of company business records from a U.S. firm to its subsidiary or affiliate.
30.37(l)	Shipments of pets as baggage, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.	30.55(j)	Shipments of pets as baggage, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.
30.37(m) ...	Carriers' stores * * *	30.56(c)	Carriers' stores * * *
30.37(n)	Dunnage * * *	30.56(d)	Dunnage * * *
30.37(o)	Shipments of aircraft parts and equipment; food, saloon, slop chest, and related stores, * * *	30.55(l)	Shipments of aircraft parts and equipment and food, saloon, slop chest, and related stores, * * *
30.37(p)	Baggage and personal effects not shipped as cargo under a bill of lading or an air waybill and not requiring an export license * * *	30.56(a)	Baggage and personal effects not shipped as cargo under a bill of lading or an air waybill and not requiring an export license * * *

FTR	FTR Regulatory topic	FTSR	FTSR Regulatory topic
30.37(q)	Reserved	.....	NA.
30.37(r)	Reserved	.....	NA.
30.37(s)	Issued bank notes and securities and coins in circulation exported as evidence of financial claims.	.....	NA.
30.37(t)	Documents used in international transaction * * *	.....	NA.
30.37(u)	Exports of technical data and defense service exemptions.	.....	NA.
30.37(v)	Vessels, aircraft, cargo vans and other carriers and containers.	.....	NA.
30.37(w) ...	Shipments to Army Post Office, Diplomatic Post Office, Fleet Post Office.	.....	NA.
30.37(x)	Shipments exported under license exception Baggage (BAG).	.....	NA.
30.37(y)(1)	Shipments of books, maps, charts, pamphlets, and similar articles to foreign libraries, government establishments, or similar institutions..	.....	NA.
30.37(y)(2)	Shipments to U.S. government agencies and employees that are lawfully exported under License Exception GOV of the Export Administration Regulations (15 CFR § 740.11(b)(2)(i) or (ii)) valued at $2500 or less per Schedule B Number.	.....	NA.
30.37(y)(3)	Personal effects as described in 15 CFR § 740.14(b)(1) being lawfully exported under License Exception BAG of the Export Administration Regulations (15 CFR § 740.14).	.....	NA.
30.37(y)(4)	Individual gift parcels and humanitarian donations being lawfully exported under License Exception GFT of the Export Administration Regulations (15 CFR § 740.12(a) and (b)).	.....	NA.
30.37(y)(5)	Vessels and aircraft lawfully leaving the United States for temporary sojourn to or in a Country Group E:1 country.	.....	NA.
30.37(y)(6)	Tools of trade that will be used by a person traveling to a Country Group E destination, that will be returned to the United States within one year and that are lawfully being exported to a Country Group E:1 destination under License Exception BAGGAGE (15 CFR 740.14 or License Exception TMP (15 CFR 740.9(a))..	.....	NA.
30.38	Exemption from the requirements for reporting complete commodity information.	30.56	Conditional exemptions.
30.38(a)	Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects and their containers.	30.56(a)(1)	Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects and their containers.
30.38(b)	Usual and reasonable kinds and quantities of furniture, household effects, household furnishings, and their containers.	30.56(a)(2)	Usual and reasonable kinds and quantities of furniture, household effects, household furnishings, and their containers.
30.38(c)	Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, * * *	30.56(a)(3)	Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, * * *
30.39	Special exemptions for shipments to the U.S. Armed Services.	30.52	Special exemptions for shipments to the U.S. Armed Services.
30.40	Special exemptions for certain shipments to U.S. Government agencies and employees.	30.53	Special exemptions for certain shipments to U.S. Government agencies and employees.
	Subpart E—General Carrier and Manifest Requirements		
30.45	General statement of requirements for the filing of carrier manifests with proof of filing citations.	30.20	General statement of requirements for the filing of manifests * * *
		30.21	Requirements for the filing of manifests.
		30.22	Requirements for filing of Shipper's Export Declarations by departing carriers.
30.46	Requirements for the filing of export information by pipeline carriers.	30.23	Requirement for the filing of Shipper's Export Declarations by pipeline carriers.
30.47	Clearance or departure of carriers under bond on incomplete manifest.	30.24	Clearance or departure of carriers under bond on incomplete manifest * * *
	Subpart F—Import Requirements		
30.50	General requirements for filing import entries	30.70	Statistical information required on import entries.
30.51	Statistical information required for import entries	30.70	Statistical information required for import entries.
30.52	Foreign Trade Zones	.....	NA.
30.53	Import of goods returned for repair	30.82	Identification of U.S. merchandise returned for repair and reexport.
30.54	Special provisions for imports from Canada	30.80	Imports from Canada.

FTR	FTR Regulatory topic	FTSR	FTSR Regulatory topic
30.55	Confidential information, import entries, and withdrawals	30.90	Confidential information import entries, and withdrawals.
	Subpart G—General Administrative Provisions		
30.60	Confidentiality of Electronic Export Information	30.91	Confidential information, Shipper's Export Declaration.
30.61	Statistical classification schedules	30.92	Statistical classification schedules.
30.62	Emergency exceptions	30.93	Emergency exceptions.
30.63	Office of Management and Budget control numbers assigned pursuant to the Paperwork Reduction Act.	30.99	OMB control numbers assigned pursuant to the Paperwork Reduction Act.
	Subpart H—Penalties		
30.70	Violation of the Clean Diamond Trade Act	30.95(a)	Penalties for violations for export (reexport) of rough diamonds.
30.71	False or fraudulent reporting on or misuse of the Automated Export System.	30.95(b)	Penalties for violations of exports other than diamonds.
30.71(a)	Criminal penalties	.....	
30.71(b)	Civil penalties	.....	
30.72	Civil penalty procedures	.....	NA.
30.73	Enforcement	.....	NA.
30.73(a)	Department of Commerce.		
30.73(b)	Department of Homeland Security.		
30.74	Voluntary self-disclosure	.....	NA.
30.75–30.99.	[Reserved].		

Dated: March 1, 2013.

Thomas L. Mesenbourg Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 2013–05435 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Automated Export System.

OMB Control Number: 0607–0152.

Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Burden Hours: 910,115.

Number of Respondents: 275,843.

Average Hours per Response: 3 minutes per AES transaction.

Needs and Uses: The Census Bureau is requesting continued clearance with revisions for the Automated Export System (AES) program. The AES record provides the means for collecting data on U.S. exports. The Census Bureau requires mandatory filing of all export information via the AES. Public Law 107–228 of the Foreign Trade Relations Act of 2003 mandates this requirement. This law authorizes the Secretary of Commerce with the concurrences of the Secretary of State and the Secretary of Homeland Security to require all persons who file export information according to Title 13, United States Code (U.S.C.), Chapter 9, to file such information through the AES.

The regulatory provisions for the collection of these data are contained in the Foreign Trade Regulations (FTR), Title 15, Code of Federal Regulations (CFR), Part 30. The official export statistics collected from these tools provide the basic component for the compilation of the U.S. position on merchandise trade. These data are an essential component of the monthly totals provided in the U.S. International Trade in Goods and Services Press Release, a principal economic indicator and a primary component of the Gross Domestic Product (GDP).

These data collected from the AES record are also used for export control purposes under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users.

Since 2007, the Census Bureau and the U.S. Customs and Border Protection (CBP) have implemented the following enhancements to the AES: (1) modified Bureau of Industry and Security Export Control Classification Numbers (ECCNs); (2) developed country of destination drop down menu selection box; (3) developed verify messages for shipments destined to Iran, North Korea, Sudan, Cuba, Pitcairn Island, Iceland and Nicaragua; (4) modified security requirements for AESDirect accounts; (5) eliminated the Social Security Number (SSN) as a valid identification type; (6) developed a shipment manager screen; (7) added warnings to filers when they are submitting shipments in the education/test region and when they are re-using a Shipment Reference Number; (8) upgraded the AES Broadcast messaging system to a self-managed software with almost immediate dissemination; and (9) upgraded AESDirect servers and system to a more current and scalable infrastructure. With the upcoming publication of the Final Rule, Foreign Trade Regulations (FTR): Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration (SED) Information: Proposed Substantive Changes and Corrections, the following enhancements will be implemented in the AES: (1) Develop ultimate consignee type drop down menu selection box; and (2) develop license value fields for licensed shipments only.

The changes identified in this Final Rule will require the addition of two data elements in the AES. The added data elements include the ultimate consignee type and the license value. The ultimate consignee type is a mandatory data element and is selected from a drop down menu based on the knowledge the exporter has at the time of filing. If the ultimate consignee types listed do not apply or if the ultimate consignee type is unknown, the filer may select ''Other'' or ''Unknown.'' The next data element added is the license value, which is a conditional data element. This value will only be required if the shipment contains a licensable commodity. Currently, less than two percent of records filed require a license.

In addition to the two new data elements added to the AES, filers will be required to file in the AES when exporting used self-propelled vehicles. The requirement to file in the AES for all used self-propelled vehicles applies regardless of value or country of destination. Currently, four percent of records filed in the AES are for used self-propelled vehicles. The Census Bureau does not capture statistics for used self-propelled vehicles valued less than $2,500. The Bureau of Transportation Statistics published the national transportation statistics in 2011 and stated that the average cost of a used passenger vehicle car was $8,786. By using these statistics, it could be conjectured that most used vehicles are currently being captured in the AES. However, with the new requirement to file all used self-propelled vehicles, we anticipate that the number of filings will slightly increase. Although additional filings will be required it is critical to capture this information for the purposes of export control under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users.

The Census Bureau will allow the trade community to continue using the current AES until the implementation date identified in the Final Rule. Implementation of the revised FTR is 270 days from the effective date of the Final Rule.

The information collected via the AES shows what is being exported (description and commodity classification number), how much is exported (quantity, shipping weight, and value), how it is being exported (mode of transport, exporting carrier, and whether containerized), from where (state of origin and port of export), to where (port of unloading and country of ultimate destination), and when a commodity is exported (date of exportation). The identification of the U.S. Principal Party in Interest (USPPI) shows who is exporting goods for consumption (control purposes), while the USPPI and/or the forwarding or other agent information provides a contact for verification of the information.

The information is used by the Federal Government and the private sector. The Federal Government uses every data element on the AES record for statistical purposes, export control, and/or to obtain data to avoid taking additional surveys.

Data collected from the AES serves as the official record of export transactions. In addition, the mandatory use of the AES enables the U.S. Government to produce more accurate export statistics. Currently, the mandatory use of the AES allows the Bureau of Industry and Security (BIS) and the CBP to enforce the Export Administration Regulations for the detection and prevention of exports of high technology commodities to unauthorized destinations; the enforcement of the International Traffic in Arms Regulations (ITAR) by the U.S. Department of State; and the validation of the Kimberly Process Certificate for the export of rough diamonds. The Census Bureau delegated the authority to enforce the FTR to the BIS's Office of Export Enforcement along with the

Department of Homeland Security's (DHS) CBP and Immigrations and Customs Enforcement (ICE).

Other Federal agencies use these data to develop the components of the merchandise trade figures used in the calculations for the balance of payments and GDP accounts to evaluate the effects of the value of U.S. exports; to plan and examine export promotion programs and agricultural development and assistance programs; and to prepare for and assist in trade negotiations under the General Agreement on Tariffs and Trade. Collection of these data also eliminate the need for conducting additional surveys for the collection of information as the AES shows the relationship of the parties to the export transaction (as required by the Bureau of Economic Analysis). These AES data are also used by the Bureau of Labor Statistics as a source for developing the export price index and by the U.S. Department of Transportation for administering the negotiation of reciprocal arrangements for transportation facilities between the United States and other countries. A collaborative effort amongst the Census Bureau, the National Governors' Association and other data users resulted in the development of export statistics requiring the state of origin to be reported on the AES. The information collected enables state governments to focus activities and resources on fostering exports of the kinds of goods that originate in their states.

Export statistics collected from the AES aid private sector companies, financial institutions, and transportation entities in conducting market analysis and market penetration studies for the development of new markets and market-share strategies. Port authorities, steamship lines, steamship freight conferences, airlines, aircraft manufacturers, and air transport associations use these data for measuring the volume and effect of air or vessel shipments and the need for additional or new types of facilities.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Chapter 9, Sections 301–307.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: March 5, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05437 Filed 3–13–13; 8:45 am]

BILLING CODE 3510–07–P

FEDERAL REGISTER

Vol. 78 Thursday,
No. 50 March 14, 2013

Part III

The President

Notice of March 12, 2013—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 78, No. 50
Thursday, March 14, 2013

Presidential Documents

Title 3—

The President

Notice of March 12, 2013

Continuation of the National Emergency With Respect to Iran

On March 15, 1995, the President issued Executive Order 12957, which declared a national emergency with respect to Iran and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959, imposing more comprehensive sanctions on Iran to further respond to this threat. On August 19, 1997, the President issued Executive Order 13059, consolidating and clarifying the previous orders. I took additional steps pursuant to this national emergency in Executive Order 13553 of September 28, 2010, Executive Order 13574 of May 23, 2011, Executive Order 13590 of November 20, 2011, Executive Order 13599 of February 5, 2012, Executive Order 13606 of April 22, 2012, Executive Order 13608 of May 1, 2012, Executive Order 13622 of July 30, 2012, and Executive Order 13628 of October 9, 2012.

The actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 12957 must continue in effect beyond March 15, 2013. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12957. The emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170. This renewal, therefore, is distinct from the emergency renewal of November 2012.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
March 12, 2013.

[FR Doc. 2013–06113
Filed 3–13–13; 11:15 am]
Billing code 3295–F3

Reader Aids

Federal Register

Vol. 78, No. 50

Thursday, March 14, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids **202–741–6000**
Laws **741–6000**

Presidential Documents
Executive orders and proclamations **741–6000**
The United States Government Manual **741–6000**

Other Services
Electronic and on-line services (voice) **741–6020**
Privacy Act Compilation **741–6064**
Public Laws Update Service (numbers, dates, etc.) **741–6043**
TTY for the deaf-and-hard-of-hearing **741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, MARCH

13771–13998 1
13999–14154 4
14155–14428 5
14429–14634 6
14635–14906 7
14907–15276 8
15277–15596 11
15597–15868 12
15869–16132 13
16133–16398 14

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8933 14429
8934 14431
8935 14433
8936 14435
8937 14627
8938 14629
8939 14631

Executive Orders:
11958 (revoked by EO 13637) 16131
12957 (See Notice of March 12, 2013) 16397
12959 (See Notice of March 12, 2013) 16397
13059 (See Notice of March 12, 2013) 16397
13222 (amended by EO 13637) 16131
13553 (See Notice of March 12, 2013) 16397
13574 (See Notice of March 12, 2013) 16397
13590 (See Notice of March 12, 2013) 16397
13599 (See Notice of March 12, 2013) 16397
13606 (See Notice of March 12, 2013) 16397
13608 (See Notice of March 12, 2013) 16397
13622 (See Notice of March 12, 2013) 16397
13628 (See Notice of March 12, 2013) 16397
13637 16131

Administrative Orders:
Memorandums:
Memorandum of February 20, 2013 13997
Notices:
Notice of March 1, 2013 (see EO 13288 of 3/6/2003; EO 13391 of 11/22/2005; EO 13469 of 7/25/2008) 14427
Notice of March 12, 2013 16397
Order of March 1, 2013 14633

5 CFR

2640 14437

Proposed Rules:
850 14233

6 CFR

Proposed Rules:
5 15889

7 CFR

7 13771
51 14907
205 13776
761 13999
762 13999
905 13777
1230 14909

Proposed Rules:
60 15645
65 15645
905 14236

9 CFR

417 14635
424 14636

10 CFR

Proposed Rules:
170 14880
171 14800
429 ..... 15653, 15808
430 ..... 14467, 14717, 15808, 15891
431 14024

12 CFR

998 15869
1730 15869

Proposed Rules:
234 14024

14 CFR

25 ..... 14005, 14007, 14155
33 15597
39 ..... 14158, 14160, 14162, 14164, 14442, 14640, 14642, 14644, 14647, 15277, 15279, 15281, 15599, 15870, 15874
71 ..... 14649, 14651, 14652, 14653, 14909, 14911
97 ..... 14009, 14010
117 14166
121 ..... 14166, 15876
129 14912
254 14913

Proposed Rules:
25 13835
39 ..... 14029, 14467, 14469, 14719, 14722, 14726, 14729, 14731, 14734, 14934, 15332, 15335, 15655, 15658, 16196, 16198, 16200
71 ..... 13843, 14031, 14032, 14473, 14474, 14475, 14477, 14478, 14479, 16202

15 CFR

30 16366
744 14914

Proposed Rules:
400 14238

16 CFR

1112.....15836
1118.....15836
Proposed Rules:
1500.....15660

17 CFR

201.....14179

18 CFR

11.....15602
38.....14654
366.....16133

19 CFR

12.....14183

20 CFR

1001.....15283

21 CFR

73.....14664
172.....14664
173.....14664
176.....14664
177.....14664
178.....14664
184.....14664
189.....14012, 14664
510.....14667
520.....14667
522.....14667
529.....14667
558.....14667
700.....14012
890.....14013, 14015
Proposed Rules:
117.....15894

23 CFR

Proposed Rules:
771.....15925

25 CFR

11.....14017

26 CFR

48.....15877, 15878
Proposed Rules:
1.....15337
57.....14034
301.....14939, 15337

27 CFR

Proposed Rules:
9.....14046

28 CFR

16.....14669
58.....16138, 16159

29 CFR

2520.....13781
2560.....13797
2571.....13797

30 CFR

Proposed Rules:
950.....16204

33 CFR

100.....13811
117 .....14185, 14444, 14446, 15292, 15293, 15878, 15879
165 .....13811, 14185, 14188, 15293, 16177
401.....16180
Proposed Rules:
100.....16205
165.....16208, 16211

34 CFR

Proposed Rules:
Ch. III.....14480, 14483, 14947

36 CFR

7.....14447, 14673

37 CFR

1.....16182

39 CFR

Proposed Rules:
111.....16213

40 CFR

52 .....14020, 14450, 14681, 15296
55.....14917
58.....16184
60.....14457
63.....14457
80.....14190
136.....14457
180.....14461, 15880
271.....15299
Proposed Rules:
52.....15664, 15895
147.....14951
180.....14487
271.....15338
372.....14241, 15913

42 CFR

412.....14689, 15882
413.....15882
424.....15882
476.....15882

44 CFR

64.....14694
67.....14697, 14700
Proposed Rules:
67.....14737, 14738
201.....13844
204.....14740

45 CFR

153.....15410, 15541
155.....15410
156.....15410, 15541
157.....15410
158.....15410
800.....15560
Proposed Rules:
155.....15553
156.....15553

46 CFR

Proposed Rules:
67.....14053

47 CFR

1.....15615
2.....14920
25.....14920
43.....15615
54.....13936
63.....15615
64.....14701
Proposed Rules:
2.....14952
54.....14957
73.....14060, 14490

48 CFR

Proposed Rules:
4.....14746
13.....14746
14.....14746
15.....14746
19.....14746

49 CFR

71.....15883
105.....15303
171.....15303
172.....14702, 15303
173.....14702, 15303
176.....14702
177.....15303
178.....14702, 15303
180.....15303
213.....16052
219.....14217
238.....16052
382.....16189
383.....16189
390.....16189
391.....16189
395.....16189
396.....16189
Proposed Rules:
571.....13853, 15920
622.....15925

50 CFR

17.....14022, 15624
622 .....14225, 15641, 15642
648 .....13812, 14226, 14230
665.....15885
679 .....13812, 13813, 14465, 14932, 15643, 16195
Proposed Rules:
17.....14245, 15925
20.....14060
100.....14755
216.....15669
300.....14490
622 .....14069, 14503, 15338, 15672
648.....15674, 16220
660.....14259
679.....14490
680.....15677

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

S. 47/P.L. 113–4

Violence Against Women Reauthorization Act of 2013 (Mar. 7, 2013; 127 Stat. 54)

Last List February 7, 2013

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.